

Published By: Jackson Lewis P.C.

Affirmative Action & OFCCP Law Advisor

**A source of insights, news and strategy on affirmative action and EEO compliance
matters**

Update: EEO-1 Component 2 Portal to Remain Open

By Laura A. Mitchell on September 27, 2019, 2:08 PM

In its most recent required status report to the court, filed September 27, 2019, the EEOC reports: [s]o long as the

Court's order is in effect stating that the collection will not be complete until it reaches what the Court has determined to be the target response rate, the EEOC will continue...

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NY 10601

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Sender:	Kaylin, Anthony <akaylin@aseonline.org>
Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Sent Date:	2019/09/27 14:27:17
Delivered Date:	2019/09/27 14:27:24

From:	Kaylin, Anthony <akaylin@aseonline.org>
To:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Subject:	FW: FINAL REMINDER: Component 2 EEO-1 Pay Data Collection for 2017 and 2018 is due by September 30, 2019
Date:	2019/08/22 13:21:28
Priority:	Normal
Type:	Note

Seriously Chris—I am getting emails back from employers from this scare tactic==I am just stating that they still have another month.

Ok—my 2 cents.

Anthony Kaylin

American Society of Employers

19575 Victor Parkway Suite 100

Livonia, MI 48152

Tel: (248) 223-8012

Cell: (734) 881-3550

akaylin@aseonline.org

www.aseonline.org

From: eeocompdata@norc.org <eeocompdata@norc.org>

Sent: Thursday, August 22, 2019 12:53 PM

To: Kaylin, Anthony <akaylin@aseonline.org>

Subject: FINAL REMINDER: Component 2 EEO-1 Pay Data Collection for 2017 and 2018 is due by September 30, 2019



Envision Healthcare

**ATTN: DIRECTOR
OF HUMAN
RESOURCES**

Dear Anthony Kaylin:

Our records indicate your company has

not yet submitted and certified Component 2 EEO-1 data. This letter serves as a

FINAL REMINDER to submit and certify. If your company has submitted and certified Component 2 EEO-1 Compensation Data for both 2017 and 2018 since the date of this letter, please disregard this reminder.

COMPONENT 2 EEO-1 DATA FOR CALENDAR YEARS 2017 AND 2018 MUST BE SUBMITTED AND CERTIFIED ON OR BEFORE SEPTEMBER 30, 2019.

EEO-1 filers must submit Component 2 data for calendar year 2017, in addition to Component 2 data for calendar year 2018, by September 30, 2019, as ordered by the court's recent decision in

National Women's Law Center, et al., v. Office of Management and Budget, et al., Civil Action No. 17-cv-2458 (D.D.C.). Please note: Although the Department of Justice filed a Notice of Appeal in this lawsuit, that notice does not stay the district court orders or alter EEO-1 filers' obligations to submit 2017 and 2018 Component 2 data. The EEOC has contracted with NORC at the University of Chicago to collect the Component 2 data for 2017 and 2018.

HOW TO FILE

The EEOC requires that Component 2 EEO-1 Reports be submitted through the *Component 2 EEO-1 Online Filing System*. To access the system, navigate to

<https://eeocomp2.norc.org>, and select "LOGIN to File."

First time system users need to create a password by entering the employer's unique User ID, FEIN, and registered email

address (provided below). If the registered email address has changed or if you are having trouble creating a password, contact the Component 2 HelpDesk. Once you begin in the system, do not bookmark any pages or screens as a point of return. Always navigate

to <https://eeocomp2.norc.org>, and select "LOGIN to File" to login again to resume filing.

User ID:
(b)(3):Section 706(b);(b)(3):Section
709(e)

FEIN:

(b)(3):Section
706(b);(b)(3):Section 709(e)

Current EEO-1 Contact's Email Address:
AKAYLIN@ASEONLINE.ORG

COMPONENT 2 EEO-1 FILING METHODS

The *Component 2 Online Filing System* has been designed to enable individual employers to file Component 2 EEO-1 data for 2017 and 2018 Compensation Data in two ways:

1. • **ONLINE FORM**

Employers may enter Component 2 EEO-1 data into an online form in the *Component 2 EEO-1 Online Filing System*.

2. • **DATA FILE UPLOAD** **(NOW AVAILABLE)**

Employers may upload comma separated value (CSV) data files through the *Component 2 EEO-1 Online Filing System*. The format of the upload data file(s) MUST follow the file layout set forth in the EEOC-approved **Component 2 EEO-1 Upload File Layout Specifications** available on

- <https://eeocomp2.norc.org/info>. Data files will be validated to ensure they conform to the specifications, and employers will receive immediate feedback through the filing system about any errors identified during validation. All errors must be resolved for the file to be successfully uploaded. Once an error-free data file has been uploaded and validated, employers MUST enter employer-level information and certify their report for each year in an online form that will be available after the uploaded file is accepted.

Employers who use a Professional Employer Organizations (PEOs) should coordinate the filing of their data with their

PEO. PEOs with questions regarding the employer-level file upload procedures should contact the Component 2 EEO-1 HelpDesk; call 877-324-6214 or email EEOCcompdata@norc.org.

HOW TO REPORT

The 100-employee threshold for determining if an employer is required to file the Component 2 EEO-1 Report is assessed by totaling the number of employees at headquarters and at all locations, which are called “establishments.” In other words, the 100-employee threshold is assessed for the employer as a whole. Note that the 100-employee threshold also applies to federal contractors. Unlike the requirements for Component 1, federal contractors with fewer than 100 employees are NOT required to file Component 2 data. If you believe your company does not meet the reporting threshold, please contact the Component 2 HelpDesk at 877-324-6214 or EEOCcompdata@norc.org.

Single-Establishment Employers, i.e., employers doing business at only one establishment in one location, must complete

a single Type 1 Component 2 EEO-1 Report for each reporting year.

Multi-Establishment Employers, i.e., employers doing business at more than one location:

- •
All employers with multiple establishments must submit establishment reports for each location, as specified below, plus a Consolidated Report (Type 2) and a Headquarters Report (Type 3).
- •
For each establishment with **50 or more employees**, a multi-establishment employer must complete a Type 4 Establishment Report to report pay and hours-worked data for the employees at that establishment.
- •
For each establishment with **fewer than 50 employees**, a multi-establishment employer may file either an Establishment List (Type 6) or Establishment Report (Type 8). A Type 6 List requires only listing the establishment name, address, and total employee count. A Type 8 Report requires providing the establishment name, address, and employee counts and hours worked by gender and race/ethnicity by job category and pay band.
- •
Note: When multi-establishment employers submit Type 4 or Type 8 reports, the *Component 2 Online Filing System* will automatically populate the employer’s Consolidated Report (Type 2) with the data from the Type 4 or 8 report(s). However, employers that submit the Type 6 List for establishments with fewer than 50 employees must manually enter into the Consolidated Report the compensation and hours-worked data for the employees at all establishments.

REPORTING PERIODS

Employers will select a pay period between October 1 and December 31 of each reporting year as the “workforce snapshot period.” The only employees whose compensation and hours-worked data must be reported are those full- and part-time employees who were on the employer’s payroll during the workforce snapshot period.

- •
The **2017 Component 2**
EEO-1 report’s workforce snapshot period would be an employer-selected pay period between October 1, 2017 and December 31, 2017.
- •
The **2018 Component 2**
EEO-1 report’s workforce snapshot period would be an employer-selected pay period between October 1, 2018, and December 31, 2018.

COMPONENT 2 EEO-1 IS REQUIRED FOR 2017 AND 2018

EEO-1 filers must submit Component 2 data for calendar year 2017, in addition to Component 2 data for calendar year 2018, by September 30, 2019, as ordered by the court’s recent decision in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (D.D.C.). Please note: Although the Department of Justice filed a Notice of Appeal in this lawsuit, that notice does not stay the district court orders or alter EEO-1 filers’ obligations to submit 2017 and 2018 Component 2 data.

Filing the EEO-1 report is

NOT voluntary, but required by federal law. See Section 709(c), Title VII of the Civil Rights Act of 1964, as amended; and §1602.7 - §1602.14, Title 29, Chapter XIV, of the Federal

Code of Regulations. Relevant legal texts are available in the **Component 2 EEO-1 Instruction Booklet**, available online at

- <https://eeocomp2.norc.org/info>.

HELPDESK SUPPORT

We are prepared to assist you. You can contact the **NORC Component 2 HelpDesk** at:

- •
Email: **EEOCcompdata@norc.org**
- •
Toll Free: **877-324-6214**
- •
Hours: **Monday - Friday, 8 am - 7 pm CST**

Sincerely,

The Component 2 EEO-1 Collection Team

For assistance filing Component 2 EEO-1 Compensation Data:

Call NORC at 1-877-324-6214, e-mail
EEOCcompdata@norc.org or visit

<https://EEOCcomp2.norc.org>

For more information about the Component 2 EEO-1 Compensation Data:

Visit <https://www.EEOC.gov>

Sender:	Kaylin, Anthony <akaylin@aseonline.org>
Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"

Sent Date:	2019/08/22 13:21:18
Delivered Date:	2019/08/22 13:21:28

From:	Paretti, Jim <JParetti@littler.com>
To:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Subject:	RE: PEO
Date:	2019/10/03 07:33:21
Priority:	Normal
Type:	Note

Got it. And thanks again.

James A. Paretti, Jr.

Shareholder

202.789.3422 direct

JParetti@littler.com



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815 Connecticut Avenue, NW, Suite 400, Washington, DC 20006-4046

From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Sent: Thursday, October 3, 2019 7:33 AM

To: Paretti, Jim <JParetti@littler.com>

Cc: KIMBERLY ESSARY <KIMBERLY.ESSARY@EEOC.GOV>

Subject: RE: PEO

[EXTERNAL E-MAIL]

My fault. First Jim Paretti email that popped up was @eeoc.gov. Fixed and you should have now.

From: Paretti, Jim <JParetti@littler.com>

Sent: Thursday, October 03, 2019 7:31 AM

To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Cc: KIMBERLY ESSARY <KIMBERLY.ESSARY@EEOC.GOV>

Subject: RE: PEO

Thank you sir. Haven't seen app't come in, but am locking down the time. I will get you paper and a short agenda at least a week out.

Look forward to seeing you!

JAP

James A. Paretti, Jr.

Shareholder

202.789.3422 direct

JParetti@littler.com



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From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Sent: Thursday, October 3, 2019 7:23 AM

To: Paretti, Jim <JParetti@littler.com>

Cc: KIMBERLY ESSARY <KIMBERLY.ESSARY@EEOC.GOV>

Subject: RE: PEO

[EXTERNAL E-MAIL]

Sent you an appointment.

From: Paretti, Jim <JParetti@littler.com>

Sent: Wednesday, October 02, 2019 6:25 PM

To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Cc: KIMBERLY ESSARY <KIMBERLY.ESSARY@EEOC.GOV>

Subject: Re: PEO

October 29 am is great. 10:30?

Sent from my iPhone

On Sep 26, 2019, at 5:06 PM, CHRIS HAFFER <CHRIS.HAFFER@eeoc.gov>wrote:

[EXTERNAL E-MAIL]

Oct 24

Oct 29 a.m.

Oct 31

Nov 5

From: Paretti, Jim <JParetti@littler.com>

Sent: Thursday, September 26, 2019 2:15 PM

To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Cc: KIMBERLY ESSARY <KIMBERLY.ESSARY@EEOC.GOV>

Subject: RE: PEO

Perhaps easier if you floated a few dates that worked on your end, and we'll try to make those work?

In terms of subject matter, in 2005, EEOC established guidelines for Professional Employer Organizations (PEOs) with respect to EEO-1 filing. My understanding is, at the time, the guidance was based on discussions with PEO representatives, and represented for lack of a better term a consensus document. I believe this technical guidance was tweaked a bit in 2006, but hasn't been touched since then. I'm happy to dig that up and send it along.

The purpose of the meeting would be to discuss the 2006 technical guidance, and potential revisions of the guidance with respect to future EEO-1 filings (obviously nothing already in process).

I can get you a more detailed white paper in advance of our sitting down.

Thank you both,

JAP

James A. Paretti, Jr.

Shareholder

202.789.3422 direct

JParetti@littler.com

<image001.png>

-

<image002.png>

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815 Connecticut Avenue, NW, Suite 400, Washington, DC 20006-4046

From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Sent: Thursday, September 26, 2019 2:07 PM

To: Paretti, Jim <JParetti@littler.com>

Cc: KIMBERLY ESSARY <KIMBERLY.ESSARY@EEOC.GOV>

Subject: Re: PEO

[EXTERNAL E-MAIL]

Hey Jim - none of those dates work. Later in October or early November I have availability.
Also if you could shed some light on the topic(s) I can make sure
the right people are there.

From: Paretti, Jim <JParetti@littler.com>

Sent: Thursday, September 26, 2019 13:59

To: CHRIS HAFFER

Cc: KIMBERLY ESSARY

Subject: RE: PEO

Good afternoon, and thanks for your patience and for your willingness to meet with us.

Would you and your team have availability to meet on the afternoon of Thursday 10/10, or anytime on Friday 10/11 or Thursday 10/17?

Friday 10/11 or Thursday 10/17 preferable (I'm flying into DC on the morning of 10/10, and Murphy's Law...).

If none of these times work, we'll try to find some additional in the week or two following...

Many thanks for your consideration,

JAP

James A. Paretti, Jr.

Shareholder

202.789.3422 direct

JParetti@littler.com

<image001.png>

<image002.png>

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From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Sent: Sunday, September 1, 2019 12:09 PM

To: Paretti, Jim <JParetti@littler.com>

Cc: KIMBERLY ESSARY <KIMBERLY.ESSARY@EEOC.GOV>

Subject: RE: PEO

[EXTERNAL E-MAIL]

Hi Jim – thanks for your patience. Happy to sit down and chat. I do have availability in September, and request some sort of brief agenda for these meetings about a week in advance.

Please understand that we will not be able to comment on the pay data collection other than to answer technical questions (which probably would be better addressed to the help desk).

Chris

From: Paretti, Jim <JParetti@littler.com>

Sent: Wednesday, August 21, 2019 3:15 PM

To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Cc: KIMBERLY ESSARY <KIMBERLY.ESSARY@EEOC.GOV>

Subject: PEO

Good afternoon. Hope you guys are surviving the dog days!

Wanted to circle back on the below, and inquire if it would be possible to arrange a sit-down sometime in September. If the answer is “no, nothing before September 30!!!!” I understand

and will relay that message back to my folks, and circle back in the Fall. If you do have some availability in September that would be great. Happy to provide some paper in advance of anything we might do in any case.

BTW, nice job on the non-binary FAQ, and thank you. Blasted out to many grateful clients: <https://www.littler.com/publication-press/publication/eeoc-provides-guidance-eeo-1-filing-non-binary-employees>

Best,

JAP

James A. Paretti, Jr.

Shareholder

202.789.3422 direct

JParetti@littler.com

[<image001.png>](#)

-

[<image002.png>](#)

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815 Connecticut Avenue, NW, Suite 400, Washington, DC 20006-4046

From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Sent: Tuesday, May 14, 2019 12:06 PM

To: Paretti, Jim <JParetti@littler.com>

Cc: KIMBERLY ESSARY <KIMBERLY.ESSARY@EEOC.GOV>; CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Subject: RE: PEOs/Meeting 5/22?

Hi Jim,

Thanks for the email.

We are mired deep in the details of the stand-up of the pay data collection. Kimberly and I are actually running the project since our office is shorthanded and our survey staff are busy with the Component 1 collection. That coupled all the hoopla surrounding the incoming chair has our calendars booked solid for the next couple of months.

My recommendation is to have your clients submit their concerns to us in writing now, or wait until the public comment period opens during the next 60 day notice and comment period for

the EEO-1 Component 1 paperwork reduction act clearance which should be in summer 2019.

In the meantime, if their matter is urgent, please share the EEO-1 email, phone number and website. Our staff regularly monitor and will assist them.

EMAIL: _

e1.techassistance@eeoc.gov

PHONE: EEOC Employer Data Team

1-877-392-4647 (toll-free)

1-866-262-0032 (fax)

Hours: 9 am - 7 pm EST

WEB:

<https://www.eeoc.gov/employers/eo1survey/>

Have a great week!

Chris

Samuel C. "Chris" Haffer, Ph.D.

Chief Data Officer

Director, Office of Enterprise Data and Analytics

U.S. Equal Employment Opportunity Commission

131 M Street, NE

Washington, DC 20507

Chris.Haffer@eeoc.gov

202.663.4949 Office

202.351.9615 Mobile

From: Paretti, Jim <JParetti@littler.com>

Sent: Monday, May 13, 2019 10:21 AM

To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>; KIMBERLY ESSARY
<KIMBERLY.ESSARY@EEOC.GOV>

Subject: PEOs/Meeting 5/22?

Good morning, guys – hope everyone had a good (if gray) weekend.

Following up on our conversation at the end of our last meeting at HQ... I have some folks from NAPEO who are interested in meeting with you and/or appropriate members of your team re:

EEO-1 and PEO reporting. A couple of the organization's major members will be in town for their fly-in.

Would you be able to meet on the afternoon of May 22, say 2:00, to discuss? Looking to discuss EEO-1 generally, and more specifically, 2005 guidance from EEOC on PEO reporting.

Let me know if this is something we could do – if dates or times are an issue, happy to try to find a mutually convenient time. Many thanks for your consideration.

Best,

JAP

James A. Paretti, Jr.

Shareholder

202.789.3422 direct

JParetti@littler.com

<image001.png>

-

<image002.png>

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Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Sent Date:	2019/10/03 07:33:12
Delivered Date:	2019/10/03 07:33:21

From:	Kaylin, Anthony <akaylin@aseonline.org>
To:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Subject:	RE: Conference Question
Date:	2019/07/24 10:05:27
Priority:	Normal
Type:	Note

Vicki will be speaking with the ILG Chairs. Standard at every conference. You may want to attend and free to do so (but I am afraid there may be a lot of questions about Component 2 which you may or may not want to answer). Your choice boss.

Anthony Kaylin

American Society of Employers

19575 Victor Parkway Suite 100

Livonia, MI 48152

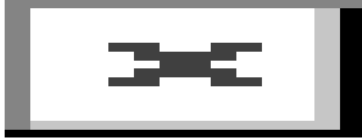
Tel: (248) 223-8012

Cell: (734) 881-3550

akaylin@aseonline.org

www.aseonline.org

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From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Sent: Wednesday, July 24, 2019 9:50 AM

To: Kaylin, Anthony <akaylin@aseonline.org>

Subject: Conference Question

Hey Tony,

On Wed, July 31 at 5:30p there's a meeting called EEOC – NILG chairs. Do you know what this meeting is about? I'm guessing that it does not involve me, but I wanted to double check.

Thanks,

Chris

Sender:	Kaylin, Anthony <akaylin@aseonline.org>
Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Sent Date:	2019/07/24 10:05:21
Delivered Date:	2019/07/24 10:05:27

From:	Kaylin, Anthony <akaylin@aseonline.org>
To:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Subject:	RE: How come there is no download for completed Component 2 reports like Component 1 has
Date:	2019/08/09 09:43:47
Priority:	Normal
Type:	Note

Ok. Thanks. Take care.

Anthony Kaylin

American Society of Employers

19575 Victor Parkway Suite 100

Livonia, MI 48152

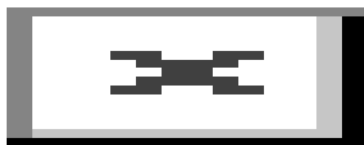
Tel: (248) 223-8012

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From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Sent: Friday, August 9, 2019 9:43 AM

To: Kaylin, Anthony <akaylin@aseonline.org>

Subject: RE: How come there is no download for completed Component 2 reports like Component 1 has

Someone from NORC will be reaching out to you to discuss.

From: Kaylin, Anthony <akaylin@aseonline.org>

Sent: Friday, August 09, 2019 8:58 AM

To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Subject: RE: How come there is no download for completed Component 2 reports like Component 1 has

Thanks boss. As an FYI-- because of complications of purchase of companies and their merging into the buying company, I have no idea which locations were included in 2017 separate and apart from the buying company. And it may have been duplicative filings. We get this all the time. I am going to file for the purchasing company, and let NORC know the other locations were included in the purchasing company file, but I will not be able to confirm let's say Unit # etc. I could maybe if there was a download report capability. It's what I do with Component 1 reporting. I don't think I will be the only one with this issue. I think you may want to talk to NORC how to report completion % given this issue. If a simple email from the purchasing company can be confirmation, regardless of the full truth which will not be totally confirmed, that might help you. Technology issue. If you have questions on this call me.

Anthony Kaylin

American Society of Employers

19575 Victor Parkway Suite 100

Livonia, MI 48152

Tel: (248) 223-8012

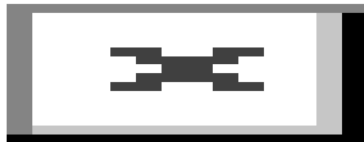
Cell: (734) 881-3550

akaylin@aseonline.org

www.aseonline.org

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skiing, person, man Description automatically generated

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From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Sent: Friday, August 9, 2019 8:52 AM

To: Kaylin, Anthony <akaylin@aseonline.org>

Subject: RE: How come there is no download for completed Component 2 reports like Component 1 has

I see what you're saying. We have a standing call with NORC on Monday's. I'll discuss it with them. Thanks.

From: Kaylin, Anthony <akaylin@aseonline.org>

Sent: Friday, August 09, 2019 8:50 AM

To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Subject: RE: How come there is no download for completed Component 2 reports like Component 1 has

Ok. I am not going to print each page separately when we upload 2000 location response. Can an email be generated to all certifying officials that they have completed the EEO-1 Component 2 and if any questions NORC will contact them (Something like this). I know we can print the certifying page, but many don't do that thinking they can download the full reports. Or have a section that is printable for Certification Completion Certificate on the dashboard if someone needs to go back in. Make sense? That shouldn't be hard to do.

Anthony Kaylin

American Society of Employers

19575 Victor Parkway Suite 100

Livonia, MI 48152

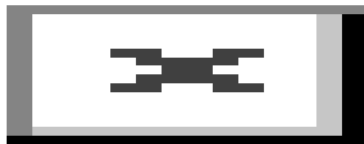
Tel: (248) 223-8012

Cell: (734) 881-3550

akaylin@aseonline.org

www.aseonline.org

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From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Sent: Friday, August 9, 2019 8:47 AM

To: Kaylin, Anthony <akaylin@aseonline.org>

Subject: RE: How come there is no download for completed Component 2 reports like Component 1 has

Because we had 2.5 months to develop, test, and turn on a secure data collection process.

From: Kaylin, Anthony <akaylin@aseonline.org>

Sent: Friday, August 09, 2019 8:29 AM

To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Subject: How come there is no download for completed Component 2 reports like Component 1 has

Printing each page separately is bad. We want a download of all reports filed. Thanks!

If there is, let me know.

Anthony Kaylin

American Society of Employers

19575 Victor Parkway Suite 100

Livonia, MI 48152

Tel: (248) 223-8012

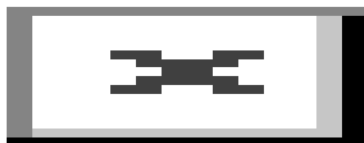
Cell: (734) 881-3550

akaylin@aseonline.org

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Sender:	Kaylin, Anthony <akaylin@aseonline.org>
Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Sent Date:	2019/08/09 09:43:36
Delivered Date:	2019/08/09 09:43:47

**DEFENDANT EEOC'S REPORT OF STEPS TO
IMPLEMENT THE EEO-1 COMPONENT 2 DATA
COLLECTION: SUBMITTED JUNE 14, 2019**

Activities Since Submission of May 24, 2019 Status Report to Court

The EEOC received the final Project Management Plan from NORC on May 27, 2019, and the final project Quality Control Plan from NORC on June 7, 2019. The Component 2 EEO-1 Online Filing System website, <https://eeocomp2.norc.org/>, was acquired and went live with a static page on June 4, 2019. NORC has completed hiring for critical positions on the project and has staff in place to open the EEO-1 Component 2 data collection on July 15, 2019.

The EEOC provided on its website homepage a further update to filers on the collection of 2017 and 2018 Component 2 data to include contact information for the NORC helpdesk on June 3, 2019. The EEOC received the draft training plan for contractor staff and filers for review on June 5, 2019. Initial helpdesk training will begin June 14, 2019.

NORC is continuing to draft data collection specifications and finalize the design of the web-based, Computer-assisted Web Interview (CAWI) data collection instrument which will be available for all filers on July 15, 2019. For the convenience of employers who prefer to utilize data file upload capability¹, and in addition to the CAWI data collection instrument, NORC is working on a data file upload function and validation process which is expected to be available as an additional data collection method no later than August 15, 2019.

On June 7, 2019 NORC submitted and EEOC approved an initial timeline for direct employer contact.

¹ In recent years, approximately 4% of filers have submitted EEO-1 Component 1 via data file upload.

Component 2 Employer Outreach	Mode	Date
Contact Employers/ Initial Notification without login information	USPS Mail	Posted on Monday, 7/1/2019
Contact Employers/ Initial Notification without login information	Email	Sent on Tuesday, 7/2/2019
Initial Notification/ preliminary Invitation to Complete with login information	USPS Mail	Posted on Friday, 7/12/2019
Initial Notification/ preliminary Invitation to Complete with login information	Email	Sent on Monday, 7/15/2019
Reminder to Complete Mail with login information	USPS Mail	Posted Monday, 8/5/2019
Reminder to Complete Email with login information	Email	Sent on Wednesday, 8/7/2019
Second Reminder to Complete Mail with login information	USPS Mail	Posted on Wednesday, 8/21/2019
Second Reminder to Complete Email with login information	Email	Sent on Friday, 8/23/2019
Phone/ IVR/ Prompt	Phone Prompting	Begin calls Tuesday, 9/3/2019, with calls continuing through the month

Additionally, the Commission approved funding for the modification to collect 2017 Component 2 data.

Activities Anticipated from June 15, 2019 – July 12, 2019

NORC is expected to deliver the draft Data Management Plan on June 15, 2019. After EEOC review, NORC is expected to deliver the final Data Management Plan on July 5, 2019. The Helpdesk will be staffed and operational on June 17, 2019 with initial scripts and basic case management functionality. The website will be updated on a continuing basis between June 30, 2019 and July 15, 2019 with employer training material beginning with Frequently Asked Questions (FAQs) added on June 30, 2019. Initial notification of employers will begin the week

Case 1:17-cv-02458-TSC Document 78-1 Filed 06/14/19 Page 3 of 3
of July 1, 2019, first with mailing to all employers followed by email notification. On July 12,
2019 employers will begin to receive log-in information, first with mailing to all employers
followed by email notification.

Status: The EEOC is currently on track to open the Component 2 data collections for calendar years 2017 and 2018 from July 15, 2019 through September 30, 2019. As noted in Defendants' notices of May 14 and May 24, 2019 (ECF Nos. 76 and 77), the EEOC is now determining the response rates for EEO-1 data submitted over the last four years to be used to assess whether the EEOC is "on track" to "complete" the Component 2 data collection by September 30, 2019, as defined by the Court's April 25 Order (ECF No. 71). At this point (and at least until employers begin submitting Component 2 data), EEOC cannot begin to project what percentage of employers will submit Component 2 data by September 30, 2019.

From:	Kaylin, Anthony <akaylin@aseonline.org>
To:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Subject:	FW: Please Submit and Certify Your EEO-1 Report (Component 1) by July 8th
Date:	2019/07/01 15:00:07
Priority:	Normal
Type:	Note

You scared a lot of people with this email Chris. I highlighted the yellow. Shouldn't have hidden it in the body of the first paragraph.

□ But it accomplished what you wanted.

Have a great 4th! Take care and see you in Milwaukee.

Anthony Kaylin

American Society of Employers

19575 Victor Parkway Suite 100

Livonia, MI 48152

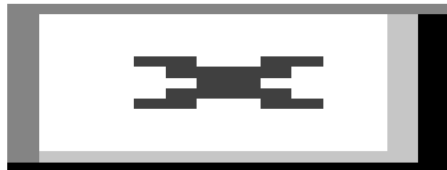
Tel: (248) 223-8012

Cell: (734) 881-3550

akaylin@aseonline.org

www.aseonline.org

Save on training when you register for July's
Principles & Practices I.



A screenshot of
a social media post Description automatically generated

From: U.S. Equal Employment Opportunity Commission <noreply@eeoc.gov>

Sent: Monday, July 1, 2019 11:57 AM

To: Kaylin, Anthony <akaylin@aseonline.org>

Subject: Please Submit and Certify Your EEO-1 Report (Component 1) by July 8th



U.S. Equal Employment Opportunity Commission

The U.S. Equal Employment Opportunity Commission (“EEOC”) would like to remind EEO-1 filers granted an extension that the extension due date to file

Component 1 of the

Employer Information Report EEO-1 has now passed. Please submit and certify your data no later than

Monday, July 8, 2019. If you have since submitted and certified your data, you may disregard this message. If you are having technical difficulties certifying or submitting your EEO-1 Report through the EEO-1 web portal, please email E1.TECHASSISTANCE@EEOC.GOV for assistance.

Extension filers can use the currently open EEO-1 portal to submit 2018 Component 1 data by July 8, 2019.

There will be no further extensions.

Please Note: Component 1 data is a separate collection from the Component 2 compensation data collection that is due by

September 30, 2019. Filers will not be able to submit EEO-1 Component 1 reports concurrently with Component 2 compensation data.

EEO-1 filers should begin preparing to submit Component 2 compensation data for calendar years 2017 and 2018 by September 30, 2019 pursuant to the recent U.S. District Court order issued on April 25, 2019. The EEOC expects a web-based portal for the collection

of Component 2 data will be active mid-July 2019. The EEOC will be notifying filers prior to the launch of the portal and providing FAQs and other materials to assist filers with the submission of Component 2 data.

Thank you.

The Employer Data Team

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Sender:	Kaylin, Anthony <akaylin@aseonline.org>
Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Sent Date:	2019/07/01 14:59:57
Delivered Date:	2019/07/01 15:00:07

From:	Kaylin, Anthony <akaylin@aseonline.org>
To:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Subject:	Need your help
Date:	2019/09/04 12:53:56
Priority:	Normal
Type:	Note

For a month now we have waited for the NORC team to allow us to fix a mistake. We had identified a company as multi-establishment when it is single establishment. 2017 was done correctly not 2018. 2017 is certified but cannot do 2018.

Here is the info:

1. User
ID:
12498029

PC: 3600Greencourt!

2.
FEIN:
38338226
1

Current EEO-1 Contact's Email Address:
KIERA.FEGAN@SOARTECH.COM

Can you get NORC to fix it. We have called 2x in the past month, and they said it would be fixed but we have to reenter the data. Fine. But can't do anything if they cannot fix it.

Thanks!

Anthony Kaylin

American Society of Employers

19575 Victor Parkway Suite 100

Livonia, MI 48152

Tel: (248) 223-8012

Cell: (734) 881-3550

akaylin@aseonline.org

www.aseonline.org

Sender:	Kaylin, Anthony <akaylin@aseonline.org>
Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Sent Date:	2019/09/04 12:53:49
Delivered Date:	2019/09/04 12:53:56

From:	Michael Eastman - CWC <meastman@cw.org>
To:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Subject:	Screenshot / location of "Comments" box
Date:	2019/07/29 16:30:40
Priority:	Normal
Type:	Note

Chris, I'm sorry to bother you with this – we're putting together a simple on-line tool to illustrate how to properly file Component 2 for our members. The FAQ contemplate situations where an employer may need to submit comments and state that the comment box will be located in the certification section of the online filing system. I don't see the comment box referenced in the user guide, the certification section of the upload file specifications, or other on-line materials. I wanted to verify that there is still a comments box and perhaps get a screen shot of it so we can explicitly direct employers to it if they have the need to clarify something.

Thanks much,

Mike

Michael Eastman

Senior Vice President, Policy and Assistant General Counsel

1501 M Street, NW | Suite 1000 | Washington, DC 20005

Tel/Direct: 202-629-5625

meastman@cdc.org | www.cdc.org



FORMERLY THE EQUAL EMPLOYMENT ADVISORY COUNCIL (EEAC*)

The Center for Workplace Compliance (CWC) is an association dedicated to helping its member employers understand and manage their workplace compliance requirements and risks. CWC's membership includes businesses and organizations of all sizes and from every major economic sector. CWC does not provide legal advice. For advice regarding legal issues, members should consult legal counsel.

Sender:	Michael Eastman - CWC <meastman@cdc.org>
Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Sent Date:	2019/07/29 16:29:49
Delivered Date:	2019/07/29 16:30:40

From:	Paretti, Jim <JParetti@littler.com>
To:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
CC:	"KIMBERLY ESSARY </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=KESSARY>"
Subject:	RE: EEO-1/Non-Binary Gender Reporting
Date:	2019/08/09 14:27:56
Priority:	Normal
Type:	Note

Thanks so much to you both!! I will share with our muckety-mucks!!
Have a great weekend. Sure I'll be in touch shortly on some new mishugas!
THANKS,
JAP

James A. Paretti, Jr.
Shareholder
202.789.3422 direct
JParetti@littler.com



Littler



Littler

Labor & Employment Law Solutions | Local Everywhere
815 Connecticut Avenue, NW, Suite 400, Washington, DC 20006-4046

From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>;
Sent: Friday, August 9, 2019 2:26 PM
To: Paretti, Jim <JParetti@littler.com>;
Cc: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>; KIMBERLY ESSARY
<KIMBERLY.ESSARY@EEOC.GOV>;
Subject: RE: EEO-1/Non-Binary Gender Reporting

[EXTERNAL E-MAIL]

Hey Jim,
Hope you're well and enjoying the summer!
I was at the NILG conference on the panel with Tim. He was confirming an answer I provided to a question from the audience. However what is highlighted below confuses two issues: collecting and reporting, and does not represent the question that was asked. The question asked was NOT about how to "handle" employees who do not identify on the gender binary. And when we are asked, we are very clear. OMB has not provided guidance on how federal agencies should collect gender identity. The question focused on "reporting". That is, how should a company that is **already** collecting gender beyond the male/female binary **report** the data. To which we answered that companies may report that information in the comments box.

We're working on an FAQ and hope to have it out soon. Please let me know if you have any additional questions.

Enjoy your weekend!

Chris

From: Paretti, Jim <JParetti@littler.com>

Sent: Friday, August 09, 2019 12:50 PM

To: MARGARET NOONAN <MARGARET.NOONAN@EEOC.GOV>

Subject: EEO-1/Non-Binary Gender Reporting

Good afternoon! You may or may not remember me – we chatted briefly at the Listening Session for Employers back in December (by way of background, prior to joining Littler last August, I was Vicki Lipnic's COS for eight years at the agency!).

Can you look at and/or confirm the below? Many of our clients have been asking about this issue with increasing frequency. To date we've advised "you have to make a choice and report M or F" – this seems like a significant change.

In a presentation by EEOC and NORC personnel at a national conference on August 1, 2019, Tim Mulcahy, Vice President of NORC's Advanced Data Solutions Center, was asked how employers should handle individuals that do not identify as either male or female when completing their EEO-1 Component 2 Reports. Mr. Mulcahy responded that the employer should report the number of people who self-identify as male or female and then use the comments box to report those who identify in some other way. If this is now permitted, it represents a significant change in the requirements.

Any intel/advice appreciated.

Best,

JAP

James A. Paretti, Jr.

Shareholder

202.789.3422 direct

JParetti@littler.com



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Sender:	Paretti, Jim <JParetti@littler.com>
Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"; "KIMBERLY ESSARY </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=KESSARY>"
Sent Date:	2019/08/09 14:27:44
Delivered Date:	2019/08/09 14:27:56

[ORAL ARGUMENT NOT SCHEDULED]

No. 19-5130

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL WOMEN'S LAW CENTER, ET AL.,
Plaintiffs-Appellees,

v.

OFFICE OF MANAGEMENT AND BUDGET, ET AL.,
Defendants-Appellants.

**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES
OF AMERICA, HR POLICY ASSOCIATION, THE NATIONAL
ASSOCIATION OF MANUFACTURERS, AMERICAN BANKERS
ASSOCIATION, AMERICAN SOCIETY OF EMPLOYERS, ASSOCIATED
BUILDERS AND CONTRACTORS, ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, CENTER FOR WORKPLACE
COMPLIANCE, INSTITUTE FOR WORKPLACE EQUALITY, NATIONAL
FEDERATION OF INDEPENDENT BUSINESS, NATIONAL RETAIL
FEDERATION, RESTAURANT LAW CENTER, RETAIL LITIGATION
CENTER, INC., AND SOCIETY FOR HUMAN RESOURCE
MANAGEMENT AS *AMICI CURIAE*
IN SUPPORT OF APPELLANTS SUPPORTING REVERSAL**

On Appeal from the U.S. District Court for the District of Columbia
Case No. 1:17-cv-02458-TSC, Hon. Tanya S. Chutkan

Daryl Joseffer
Jonathan Urick
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WASHINGTON, DC 20062
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James.BanksJr@shrm.org
*Co-Counsel, Society for Human Resource
Management*

**CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW, AND
RELATED CASES PURSUANT TO CIRCUIT RULE 28(a)(1)**

A. Parties and Amici. All parties appearing in this Court are listed in the Brief for Appellants. All *Amici* participating in the district court are listed in the Brief for Appellants. All *Amici* participating as *Amici Curiae* in support of Appellants in this Court are listed in the caption of this brief and in the Corporate Disclosure Statement.

B. Rulings Under Review. An accurate reference to the rulings at issue appears in the Brief for Appellants.

C. Related Cases. An accurate statement regarding related cases appears in the Brief for Appellants.

DATED: August 26, 2019

Respectfully submitted,

SEYFARTH SHAW LLP

By /s/ Camille A. Olson
CAMILLE A. OLSON

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *Amici* submit the following corporate disclosure statement.

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Center For Workplace Compliance (formerly the Equal Employment Advisory Council (“EEAC”)) (“CWC”) has no parent corporation or publicly held company that owns 10% or more of its stock.

The Institute For Workplace Equality (formerly The OFCCP Institute) (“the Institute”) has no parent corporation or publicly held company that owns 10% or more of its stock.

National Federation of Independent Business (“NFIB”) has no parent corporation or publicly held company that owns 10% or more of its stock.

National Retail Federation (“NRF”) has no parent corporation or publicly held company that owns 10% or more of its stock.

The Restaurant Law Center (“RLC”) has no parent corporation or publicly held company that owns 10% or more of its stock.

The Retail Litigation Center, Inc. (“The RLC”) has no parent corporation or publicly held company that owns 10% or more of its stock.

Society For Human Resource Management (“SHRM”) has no parent corporation or publicly held company that owns 10% or more of its stock.

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GLOSSARY

APA	Administrative Procedure Act
BLS	Bureau of Labor Statistics
DOJ	Department of Justice
EEO-1	EEO-1 Report
EEOC	Equal Employment Opportunity Commission
FOIA	Freedom of Information Act
JA	Joint Appendix
NAS	National Academy of Sciences
Consortium	National Payroll Reporting Consortium, Inc.
OFCCP	Office of Federal Contract Compliance Programs
OMB	Office of Management and Budget
PRA	Paperwork Reduction Act
SJA	Supplemental Joint Appendix

Amici Curiae

ABA	American Bankers Association
ABC	Associated Builders and Contractors
AGC	Associated General Contractors of America
ASE	American Society of Employers

Chamber	The Chamber of Commerce of the United States of America
CWC	Center for Workplace Compliance
HRPA	HR Policy Association
The Institute	The Institute for Workplace Equality
NAM	The National Association of Manufacturers
NFIB	National Federal of Independent Business
NRF	National Retail Federation
RLC	The Restaurant Law Center
The RLC	The Retail Litigation Center, Inc.
SHRM	Society For Human Resource Management

STATUTES AND REGULATIONS

All applicable statutes and regulations are contained in the Brief for Appellants.

**STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF
AUTHORITY TO FILE PURSUANT TO FED. R. APP. P. 29(a)(4)(D)**

Amici are authorized to file this brief pursuant to Federal Rule of Appellate Procedure 29(a)(2) because all parties consent to its filing. *Amici* have a strong interest that differs from the parties'. The district court ordered the Equal Employment Opportunity Commission ("EEOC") to conduct a highly burdensome collection of information from employers, even though the collection will have little if any practical utility and will raise serious confidentiality concerns. The costs of gathering and reporting the required information, as well as the risk of improper public disclosure of this sensitive, confidential business information, fall largely on employers, not on the government. Employers represented by *Amici* thus have a distinct and important interest in this case.

The Chamber is the world's largest business federation, representing 300,000 direct members and indirectly representing the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country.

HRPA represents the chief human resource officers of more than 375 of the largest corporations doing business in the United States and globally. Since its founding, one of HRPA's principle missions has been to ensure that laws and policies affecting human resources are sound, practical, and responsive to labor and employment issues arising in the workplace.

The NAM is the largest manufacturing association in the United States. It represents small and large manufacturers in every industrial sector. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

ABA is the principal trade association of the banking industry. It represents banks and holding companies of all sizes, as well as savings associations, trust companies, and savings banks.

ASE supports Michigan's business community through the information and programming it provides to its 760 employer members to assist them in meeting their compliance obligations and to be employers of choice.

ABC represents more than 21,000 members, including all specialties within the U.S. construction industry, and is comprised primarily of firms that perform work in the industrial and commercial sectors, as well as government contractors.

AGC is a nationwide trade association of construction companies, with more than 26,000 members. Its members construct public and private buildings as well as other structures.

CWC is the nation's leading association of employers dedicated exclusively to helping its members develop practical and effective programs for ensuring compliance with fair employment and other workplace requirements. Its membership includes more than 200 major U.S. corporations, collectively providing employment to millions

of workers. CWC's directors and officers include many of the industry's leading experts in the field of equal employment opportunity and workplace compliance.

The Institute is a national organization that trains and educates federal contractors and subcontractors in understanding and complying with their affirmative action and equal employment obligations. The Institute's members are representative of nine diverse industries, with over 498,000 employees, and a total of 8,965 separate establishments.

NFIB represents small businesses in Washington, D.C., and all 50 state capitals. NFIB's mission is to promote and protect the right of its members to own, operate and grow their businesses.

NRF is the world's largest retail trade association; it represents all aspects of the retail industry. NRF's membership includes discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and Internet retailers.

RLC is a public policy organization affiliated with the National Restaurant Association, the largest non-profit, tax exempt trade association representing the restaurant and foodservice industry. RLC was created in 2015 to provide courts with the industry's perspective on legal issues significantly impacting the industry.

The RLC's members include many of the nation's largest and most innovative retailers. Those retailers employ millions of workers throughout the United States.

The RLC is the only trade association dedicated to representing the retail industry in the judiciary.

SHRM works to create better workplaces where employers and employees thrive together. As the voice of all things work, workers and the workplace, SHRM is the foremost expert, convener and thought leader on issues impacting today's evolving workplaces.

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

No counsel for a party authored this brief in whole or in part, and no person other than *Amici*, their members, or their counsel contributed money intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

SUMMARY OF ARGUMENT

Amici fully agree with the government's arguments and will not belabor them.

In our view, the administrative record amply supports OMB's stay decision under the Paperwork Reduction Act ("PRA") by showing that the proposed Component 2 data collection imposes high burdens, with little if any utility, and raises serious unresolved confidentiality concerns. However, even if plaintiffs had standing and the district court properly vacated the stay (points with which we do not agree), the court still had no authority to order EEOC to collect Component 2 data, much less to do so on the timetable and in the manner prescribed by that court.

This brief focuses on the practical significance of that remedial error. In short, the court required EEOC to collect this information without any meaningful consideration of the extensive administrative record and other evidence showing that the information collection was not compliant with the PRA and unwarranted.

If the district court had simply vacated OMB's stay and remanded to that agency, OMB and EEOC each could have considered whether EEOC should proceed with a Component 2 information collection and, if so, how. OMB could have reviewed and reconsidered the administrative record in conducting a final review under the PRA of EEOC's proposed information collection. Then OMB could have made a final decision with a reasoned explanation, ultimately concluding the review it began in August 2017.

Even apart from OMB's decision, EEOC could have considered, in light of changed circumstances and newly available information, whether it still wanted to collect the Component 2 data, and, if so, in what way. For example, EEOC could have considered when it would be reasonable to require employers to submit information, and for what time period.

But the district court's remedial orders took those decisions away from the agencies Congress charged to make them. The court's failure to follow basic rules of administrative procedure -- by requiring and managing an information collection by EEOC instead of just remanding to OMB -- thus had far more than procedural consequences. It forced an outcome with no regard whatsoever for the consequences imposed on the regulated parties -- here, employers -- that the PRA is designed to protect. This brief details those consequences, which thus far have received scant consideration in this litigation, even though they were set forth in detail in the record before OMB as well as in the *Amici* briefs submitted to the district court. That record fully supports OMB's conclusion that the revised EEO-1 imposes unwarranted burdens, lacks utility, and raises significant confidentiality concerns.

First, when EEOC initially proposed the Component 2 data collection, it vastly underestimated the burden on employers. OMB's record includes a detailed economic survey demonstrating that employers would annually spend over \$400 million in pure labor costs alone, carrying a total annual burden of \$1.3 billion in

overhead costs, and an estimated \$178 million in one-time costs for the design, testing, and implementation of information systems.

Second, OMB's record shows that the Component 2 data collection will have little to no practical utility and certainly not sufficient utility to justify the burden on employers. Before OMB, EEOC conceded that it "does not intend or expect that this data will identify specific, similarly situated comparators or that it will establish pay discrimination as a legal matter." JA 348.

Third, OMB's record supports its conclusion that the Component 2 collection jeopardizes the confidentiality of employer data. For example, the National Academy of Sciences ("NAS") prepared a report finding that "[e]mployee compensation data are generally considered to be highly sensitive," but "EEOC provides [this] data to agencies that do not have the same level of confidentiality protections" and ineffective protection of this information "could lead to serious consequences and result in substantial harm." SJA 183, 262-263.

Finally, the district court made all of those matters worse by fashioning a remedy itself that required the government to proceed with a hasty collection of data without regard to employer burdens, industry standards for reliable collection of data, or confidentiality issues. EEOC Chief Data Officer Dr. Samuel Haffer testified that the July 15-September 30 deadline for compliance "did not" account for the "employer burden concerns" or the time it would reasonably take employers to comply. JA 96.

Dr. Haffer further testified that this sensitive and confidential data will *not* be collected pursuant to applicable industry standards because a collection under those standards could not occur until 2021. The upshot is a “high cost” to employers with “ramifications for the quality of information that EEOC collects.” Brief of Appellant at 30.

To be clear, this Court need not itself decide questions like burden, utility, and confidentiality in the first instance. But it should understand their weighty nature and the importance of allowing the administrative agencies to consider them and exercise their own judgment.

ARGUMENT

I. The District Court Should Have Remanded To OMB Rather Than Crafting Its Own Remedy Because OMB’s Substantial Administrative Record Identified Significant PRA Deficiencies With EEOC’s Proposed Revisions To the EEO-1 Report

After the district court granted plaintiffs’ motion for summary judgment and vacated OMB’s stay of the Revised EEO-1, the court stated that “it must fashion an appropriate remedy.” JA 172. The court refused to remand for further consideration by OMB of its stay decision, finding it is “unlikely that the government could justify its decision on remand....The government’s deficiency is not that it failed to explain OMB’s ‘reasoning’ but that OMB’s reasoning lacked support in the record.” JA 173. That was wrong because, as detailed below, OMB’s record contained significant support for its reasoning, support the district court all but ignored.

The district court further erred by taking another, extraordinary step: requiring EEOC to collect Component 2 data and micromanaging important aspects of that collection. Even if the record before OMB had not been sufficient to justify a stay, the court had authority only to make that determination and vacate the stay. *See* Br. for Appellant 26-34. OMB could have then completed its final review of the Component 2 collection under the PRA, and EEOC also could have reconsidered whether it still wanted to proceed with a Component 2 collection (which is not mandated by statute) and, if so, how and when to do so. By ordering a hasty Component 2 collection, the district court precluded both of those agencies from exercising their administrative discretion over the Component 2 collection. On the record here, that produced an untenable and unfair result.

Amici had twice provided information to OMB demonstrating that EEOC's proposed Component 2 data collection did not satisfy the PRA's requirements to: minimize the burden of the proposed data collection; show that the data collection would enhance the mission of the agency; or adequately and effectively address confidentiality concerns. *See* JA 202; 44 U.S.C. § 3504(c).

Significantly, the second of those submissions, which came in early 2017 as OMB was reconsidering its initial approval, relied on the actual experience of employers in attempting to comply with the Component 2 obligations. That experience revealed, among other things, substantial labor costs as well as system upgrades and overhead costs required for designing, testing, and implementing the

information systems necessary to comply. These actual costs far exceeded the estimates EEOC had provided to OMB.

Key here is the magnitude of Component 2, which EEOC minimized. Component 2 vastly expands the data fields employers must complete. Component 1 contains only 180 data fields per employer location. JA 187. Component 2 replaces Component 1 for all private employers with more than 100 employees, and contains 3,660 data fields *for each* employer location. For the first time, the form requires wage information and hours worked data for each employee subgroup. *Id.*

As described below, the record before OMB establishes that EEOC's planned collection did not satisfy the requirements of the PRA, because it substantially underestimated the burden on employers, showed little to no public benefit, and lacked appropriate safeguards to ensure confidentiality. The district court erred by precluding OMB and EEOC from considering these facts on remand, and exercising their judgment and discretion, before any Component 2 collection.

A. The Record Before OMB Showed EEOC's Burden Estimates Vastly Understated The True Costs of Compliance

In the PRA process, EEOC created two grossly understated burden estimates. Neither estimate was supported by any analysis. *See* Notice of Submission for OMB Review, Final Comment Request: Revision of the EEO-1 ("Final Proposed Revisions"), JA 338. Before OMB, EEOC's final revised estimates included an annual compliance cost of \$53.5 million for 60,866 respondent companies to file an

estimated 674,146 reports (based on 1,892,980 hours annually). JA 343. Additionally, EEOC estimated a \$27.2 million one-time burden associated with the new requirement (based on eight hours of work by information systems specialists for each of the 60,866 affected employers). *Id.*

EEOC's revised estimates were unsupported. In contrast, *Amici's* submissions to OMB included a detailed economic survey of over 50 companies showing that employers would annually spend in excess of \$400 million in pure labor costs alone, carrying a total annual burden of \$1.3 billion in overhead costs, as well as an estimated \$178 million one-time cost for the design, testing, and implementation of information systems needed to provide Component 2 data. JA 196-199.

1. *The Record Before OMB Demonstrated EEOC's One-Time Burden Estimate Was Unrealistic*

Before OMB, EEOC mistakenly assumed that employers would be able to generate W-2 and hours data after a human resource information system professional spent just eight hours “developing queries . . . in an existing human resources information system.” JA 343. First, EEOC's underlying assumption – that a single system houses all the data necessary to generate the W-2 and hours data – was incorrect. OMB received information from *Amici* that most employers maintain gender, race, and ethnicity data in a system that is different from the one that houses payroll information, including W-2 wage information. SJA 17. *Amici* also informed OMB that, in practice, hours worked data was likewise captured outside of the human

resources information system; and hours data for exempt employees (those who are salaried and not entitled to overtime under the Fair Labor Standards Act) simply did not exist for most employers. SJA 18-20. OMB's record, moreover, contains evidence that even human resources information systems that maintain a standardized or default value for "work hours" for salaried exempt employees (such as 40 hours per week) do not reflect an employee's actual hours worked. SJA 55-56. Determining how to combine gender, race, and ethnicity data housed in a human resources information system with W-2 wage and hours data housed in a payroll system, often by a third party, would exceed eight hours.

Second, EEOC's estimate to OMB of the one-time burden was also inaccurate because the hourly rate on which it was based – \$47.22 for a "Professional" – failed to account for the fact that senior information technology personnel, legal personnel, and others would be involved in developing the processes necessary to generate the required data. JA 353. The identified hourly rate was far lower than the actual rates of pay for such individuals. SJA 18.

Third, EEOC's OMB submission assumed that filing on-line through web-based fillable forms would alleviate the burden of manual data entry. However, OMB's record included information that fillable forms still require manual data entry for each establishment. SJA 75. With the addition of W-2 data and hours data, reported in twelve different pay bands within each EEO-1 category, each EEO-1 responder would be required to populate as many as 3,660 separate cells of data. *Id.*

Finally, EEOC's OMB estimate ignored the burden associated with requiring employers to develop processes to report an "hours worked" number, particularly for partial year employees. Numerous *Amici* presented OMB with information that such costs are massive, particularly for large employers. *See e.g.*, SJA 20.

The National Payroll Reporting Consortium, Inc. ("Consortium"), a trade association whose member organizations provide payroll processing to nearly two million U.S. employers, recently explained these points in a letter to EEOC, OMB, and DOJ. SJA 83.

System design and development, testing, release and related training and communications necessary to comply with the Revised EEO-1 require substantial lead time in order to produce competent results.¹ As Consortium explained:

Systems development is also not a straightforward task of merely formatting data (assuming such data is available) into an EEOC-defined file specification. Such projects require specific procedural or systemic handling of complex fact patterns, which may require rulemaking or other guidance from EEOC. A few examples include handling of:

1. Employees with job classification code changes during the snapshot period, or the full year
2. Reclassification of a job category during the year

¹ Systems development requires procedural or systemic handling of complex fact patterns to allow data to be accurately formatted into an EEOC-defined file specification. SJA 85.

3. Employees that appeared in the snapshot period but were terminated, deceased or retired by the end of the snapshot period
4. Employee changes of status (e.g., temporary to regular; part-time to full-time; non-exempt to exempt) during the snapshot period or year
5. Changes in work location/establishment, or work location/establishment, that become inactive during the period
6. Employees with more than one job classification concurrently or during the snapshot period. SJA 85.

2. *The Record Before OMB Demonstrated EEOC's Annual Burden Estimate Was Similarly Unrealistic*

The record before OMB demonstrated that EEOC also significantly underestimated the annual cost to employers of collecting, verifying, validating and reporting on data that must be pulled from various systems and sources.

As noted above, employers do not house the required data in a single information system. Even after the data is compiled and generated, a combination of human resource information system professionals and human resources professionals would have to expend time verifying and validating it. Legal professionals would also be involved in the verification process, given that EEOC's stated purpose for the collection is to target government enforcement efforts, and given the requirement that a company official certify the filing, subject to penalties. SJA 18.

Second, EEOC based its revised burden estimate for the generation and reporting of W-2 data and hours data on the wage rate of \$24.23, the BLS wage rate

for Administrative Support personnel. SJA 10. Again, before OMB demonstrated that employees other than Administrative Support personnel would be engaged to collect, verify, validate, and report the W-2 and hours data. SJA 19.

Third, compounding EEOC's underestimate of the hourly rate of personnel compiling the necessary data, EEOC's estimate to OMB failed to include new overhead costs. SJA 244. By failing to account for employer overhead costs, EEOC underestimated the financial burden on employers by hundreds of millions of dollars. JA 193-199.

Fourth, EEOC did not provide any estimate of the costs associated with implementing the tools necessary to upload a data file to the EEO-1 survey site in compliance with EEOC's precise data specifications. SJA 75. As noted above, EEOC assumed that filing on-line through fillable forms would alleviate the burden of manual data entry. Yet, OMB's record contained information that fillable forms would still require manual data entry for each establishment. *Id.* Though employers could avoid such manual data entry by uploading a data file to complete the EEO-1 Survey (an option that only became available on August 15, 2019), that itself imposes a significant cost according to record evidence before OMB. JA 182; SJA 12. And, EEOC acknowledged that only 2% of all employers had availed themselves of the tools necessary to use this format (1,449/60,886) for completing the EEO-1 Survey before the addition of Component 2. JA 364. The 2016 record before EEOC and OMB indicated that the development of an exemplar tool for the EEO-1 data file

“upload” – before Component 2 – required a one-time expenditure of over 110 data analyst hours. *Id.*; SJA 75. EEOC’s failure to extrapolate this data to accurately cost out compliance with the expanded EEO-1 Component 2 requirements severely underestimated these costs to employers.

Finally, OMB’s record includes reference to EEOC’s failure to account for the costs employers would incur responding to the inevitable investigations and enforcement actions that will be prompted by “false positives” that flow from comparing employees within the grossly overbroad EEO-1 categories. JA 197, 202, 204; SJA 19. Because EEOC and the Office of Federal Contract Compliance Programs (“OFCCP”) intend to use the Component 2 results to target their enforcement efforts, and because those analyses will be fundamentally flawed, as discussed below, OMB received information from employers who would be forced to expend resources producing additional data to EEOC and/or OFCCP, retaining labor economists to run their own analyses of pay, and engaging legal counsel. *Id.*

B. The Record Before OMB Showed Questionable To No Public Benefit of The Revised EEO-1

OMB’s record contained ample evidence that the Revised EEO-1 lacked benefit, including references by *Amici* to the Sage Report. The Sage Report, which EEOC used to formulate the proposal and guide the development of analytical techniques to make full use of the data to be collected, recognized that summary data at the organization level will likely be of very limited use in EEOC practice. JA 103.

Despite this, EEOC identified three ways in which it might use the proposed W-2 and hours-worked data: (1) early assessment of charges of discrimination; (2) publication of aggregate EEO-1 data; and (3) EEOC training. JA 348. None of these articulated bases is sufficient to meet the PRA requirement that a collection provide “utility” to the public or Federal Government, particularly when compared against the burden of collecting sensitive compensation data from every employer in the country with more than 100 employees. EEOC’s own PRA submission admitted that “the EEOC does not intend or expect that this data will identify specific, similarly situated comparators or that it will establish pay discrimination as a legal matter.” *Id.*

1. *OMB’s Record Included Evidence That EEO-1 Pay Data Would Not Assist in Early Assessment of Discrimination Charges*

The names of the EEO-1 job categories themselves make clear that comparisons among them are inappropriate as a matter of law.² For example, OMB received information that there was no legal support for comparing Sales Workers to Laborers and Helpers, Executive/Senior level Officials and Managers, Operatives, or

² In claims of pay discrimination, relevant comparators must be similarly situated or perform substantially similar work under equal working conditions, respectively. *See Holbrook v. Reno*, 196 F.3d 255, 261 (D.C. Cir. 1999) (under Title VII, plaintiff must demonstrate that all of the relevant aspects of her employment situation were nearly identical to those of the similarly-situated employee.) (internal quotations omitted); *Spencer v. Virginia State University*, 919 F.3d 199 (4th Cir. 2019) (rejecting broad notions of comparability under Equal Pay Act).

Professionals. JA 197; SJA 24-25. Employers have an inherent right to value jobs differently for reasons other than gender, race, or ethnicity.

EEOC effectively ignored the numerous factors that could influence pay when claiming that its statistical tests “could determine whether factors such as race, ethnicity, gender and hours worked impact the distribution of individuals in pay bands.” JA 349. Notwithstanding the inaccurate analyses, EEOC stated that an employer would have the “opportunity to explain its practices, provide additional data, and explain the non-discriminatory reasons for its pay practices and decisions.” *Id.* In other words, EEOC asserted that a simplistic analysis of data submitted under Component 2 would create a presumption of discriminatory compensation practices. In addition to being inaccurate, such a presumption would subject wholly innocent employers to sprawling EEOC investigations or massive and costly class action litigation in order to overcome the presumption of discriminatory compensation practices.

In evaluating a charge of discrimination, EEOC already has the authority to collect detailed compensation information from employers based on the specific allegations in a charge under investigation. Thus, employers will still be subject to requests for information in connection with specific charge filings; but in addition, they will now be forced to explain the erroneous assumptions EEOC and others may make based on flawed compensation data analyses from Component 2 data.

Significantly, EEOC admitted to the district court that collecting data in pay bands “is not a valid way of collecting pay data for purposes of enforcing discrimination laws.” JA 75. EEOC stated that the pay band data that the agency currently collects via an analogous survey of state and local governments³ “have not been useful, and, in fact...those data aren’t used at all.” JA 104. The collection and dissemination of this new data can only create unfair litigation risk for employers based on faulty data and assumptions.

2. *OMB’s Record Included Evidence that EEOC’s Stated Plan To Publish Aggregate EEO-1 Data Provides No Utility*

EEOC also contended that “EEOC enforcement staff could examine how the employer compares to similar employers in the labor market by using a statistical test to compare the distribution of women’s pay in the respondent’s EEO-1 report to the distribution of women’s pay among competitors in the same labor market.” JA 349. Here, too, *Amici* demonstrated there is no basis in law for such comparisons in evaluating compensation discrimination. *See e.g.*, JA 197-198. Because it is not discriminatory for an employer to pay lower wages for certain positions than its competitors, the mere fact that a particular employer’s aggregate compensation data is

³ Each State and political subdivision with 100 or more employees must file a EEO-4 form with EEOC under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, which “require[s] [them] to keep records and to make such reports to the Equal Employment Opportunity Commission as are specified in the regulations of the Commission.” *See* EEO-4, EEOC, *available at* <https://egov.eeoc.gov/eeo4/> (last visited Aug. 21, 2019).

below the pay of the industry is irrelevant to an investigation of whether an employer's pay practices are discriminatory.

Nor, according to OMB record evidence, would such comparisons have any value given that the data contained in the Component 2 filings would be flawed and would not provide an "apples to apples" basis of comparison to other market-based data sets. JA 129. Finally, without complete descriptions of all factors contributing to compensation decisions, which are not included in Component 2, no useful analysis regarding gender pay practices can be conducted.

C. The Record Before OMB Showed That EEOC Failed To Demonstrate That It Had Put In Place Appropriate Safeguards To Protect Confidentiality

Before issuing the proposed rule, EEOC engaged the National Academy of Sciences ("NAS") to conduct a study, which, *inter alia*, looked at confidentiality concerns raised by EEOC's collection of employee pay data in EEO-1 reports and its subsequent disclosure of this data in aggregate and original form. The NAS report recognized that "[e]mployee compensation data are generally considered to be highly sensitive; they are even considered proprietary information by many private-sector employees." SJA 43, 104. Despite the confidential nature of this data, the NAS's report noted that the "EEOC provides [this] data to agencies that do not have the same level of confidentiality protections." SJA 183. Ineffective protection of this information could lead to serious consequences and result in substantial harm to individuals and to the federal government. In the hands of the wrong people, the

original pay data from the EEO-1 report could cause significant harm to EEO-1 responders and subject employees to potential violation of their privacy.

In addition to the NAS report, *Amici* made additional showings to OMB that EEOC had failed to address the significant privacy and confidentiality concerns related to the collection of highly confidential Component 2 pay data. JA 179-180; 193-199; SJA 1-7, 251, 258-263.

EEOC did not demonstrate to OMB that it would require those to whom it provides the EEO-1 reports to (1) retain them in confidence; (2) demonstrate that their information security programs are sufficient to protect this data from malicious attacks targeted at such data; or (3) provide notification to EEOC in the event their data security is compromised or the entity or individual experiences a data breach. Since the district court's order, EEOC's public website warns employers that the required transmission of Component 2 data to EEOC may expose the data to "tampering from an outside source."⁴ Moreover, EEOC's PRA submission was silent as to how the data would be transferred from EEOC to the various federal or state agencies or individuals. SJA 57-58.

Concerns over confidentiality are heightened when considering that EEOC routinely shares EEO-1 reports with other federal agencies. Thus, such reports are not only routinely the subject of discovery requests in litigation, but also of FOIA

⁴ U.S. Equal Emp't Comm'n, Component 2 EEO-1 Online Filing System, <https://eeocomp2.nor.org/Index> (last visited Aug. 23, 2019).

requests to other federal agencies. JA 300. Even with the Supreme Court's recent decision in *Food Marketing Institute v. Argus Leader Media*, ___ U.S. ___, 139 S. Ct. 2356 (2019), which clarified the scope of FOIA's exception for confidential business information, employers are rightly concerned that EEO-1 compensation and other data are potentially vulnerable to widespread dissemination. These concerns are contained in OMB's record. JA 179, 188-189, 198; SJA 40-42. Employers' concerns are compounded considering the revised EEO-1 data is potentially highly misleading with regard to pay comparisons due to the broad pay bands it uses, thus drastically raising the likelihood of unnecessary litigation.

At the district court, Dr. Haffer conceded that EEOC does not have the internal resources to "make the necessary updates, enhancements, security testing, load and performance testing, data validations and verifications, and application testing to *securely collect and store this significantly increased volume of highly sensitive Component 2 data*" under its current systems. JA 126-127 (emphasis added). As a result, EEOC did not adequately address Components 2's confidentiality risks as required by the PRA before OMB.

II. The District Court's Order Compounds The Problems With Burden, Utility, and Confidentiality On An Ongoing Basis

The problems inherent in Component 2 were exacerbated by the district court's remedial orders, which required the government to proceed with a hasty collection of data ignoring employer burdens, industry standards for reliable collection

of data, and confidentiality issues. As the government recognizes, this will come at a “high cost” to employers and “may have ramifications for the quality of information that EEOC collects.” Appellant Br. at 30. Some of these costs and quality ramifications will extend well past the September 30, 2019 due date for the first collection. For example, absent agency intervention, a second data collection for 2019 data would take place in early 2020, and a third for 2020 data in 2021, under the district court’s order tolling the termination date of OMB’s initial PRA clearance. JA 3. And all of these cost and quality ramifications demonstrate the practical problems that can result when a court exceeds its remedial authority by, for example, ordering and micromanaging an information collection without regard to the impact on the regulated parties.

A. Retroactive Data Collection Raises Serious Reliability Concerns

In a written declaration, Dr. Haffer presented testimony describing significant concerns with the validity and reliability of the Component 2 data collection:

Given the absence of a true pilot study leading up to the 2016 authorization of Components 1 and 2 of the EEO-1, and given the abbreviated period available in which to develop and implement quality assurance processes and procedures . . . (i.e., data training, instructions, directions, and technical assistance for employers), it is likely that undertaking and closing the collection of Component 2 data by September 30, 2019 would raise major data validity and reliability issues. Under the circumstances, *I perceive a significant risk that employers would not be reporting comparable data that can be used by the government or others in meaningful comparisons or analyses.*

JA 131 (emphasis added). Dr. Haffer's concerns were based on the likely increase in the "errors in the entire data collection process" if employers were required to report, retroactively, on 2017 Component 2 data at the same time as 2018 data. JA 127. In its 2016 OMB submission, EEOC contemplated collecting one year of data at a time, and allowing employers an 18-month lead time for the first year of data collection to allow time to design and implement systems and collect data contemporaneously, without having to construct reports retroactively in systems that were not designed for that purpose. JA 320.

Dr. Haffer testified that while EEOC could possibly collect the data by retaining a third-party consultant, he was dubious that EEOC could conduct meaningful "data comparisons" or conduct "other analyses" with the pay and hours data because of the "limited quality control and quality assurance measures that would be implemented due to this expedited timeline." JA 128. Because there was no pilot program, there has been no opportunity to determine the utility and value of the data being collected. Problems related to the initial collection will persist into future collections. The concerns described by EEOC's Chief Data Officer thus have far-reaching and ongoing implications with regard to the validity of any analyses or publishing of aggregated data based on information collected through the Revised EEO-1 Report.

B. The District Court Heightened The Costs and Burdens of Component 2 Beyond What EEOC Presented to OMB

As detailed above, EEOC's estimates of cost and burden presented to OMB were wholly inadequate, both for employers initializing the process and for ongoing annual compliance efforts. The expedited reporting and collection period mandated by the district court further magnified the errors within the original burden estimates. Dr. Haffer testified that the selection of a collection period of July 15 - September 30, 2019 "did not" include consideration of the "employer burden concerns" or the time it would reasonably take employers to comply with the Component 2 EEO-1 data collection requirements. JA 97.⁵ Instead, Dr. Haffer testified that the September 30, 2019 date was picked because he understood it was the PRA expiration date on the EEO-1 form.

The Consortium had noted, before the district court's remedial orders in this case, that the cost for employers would only increase if they were required to gather data retroactively. As the Consortium explained, "a substantial added complication [is] that the Component 2 pay data report would require retroactive gathering of input. Because of OMB's stay, employers and service providers generally did not

⁵ Dr. Haffer's Declaration, which was accepted as direct testimony at the April 16, 2019 hearing, was not challenged or questioned insofar as Dr. Haffer testified he understood that employers believe that they are likely to experience significant issues regarding the immediate reporting of Component 2 data. *See* JA 127.

develop the data collection mechanisms and did not collect and store the necessary data to comply with such a report for 2018” (much less 2017). SJA 84.

Dr. Haffer further testified that before the district court’s March 2019 order, EEOC was in the process of upgrading its EEO Surveys under an initiative titled EEOC Data and Analytics Modernization Program, which was designed to provide a “comprehensive evaluation of the collection, analysis, and dissemination of EEOC data.” JA 124. Following the court’s decision, and because of the expedited and retroactive nature of the collection directed by the court, EEOC retained a contractor to undertake and close the collection by September 30, 2019 (at a cost to the government of over three million additional dollars). JA 127. However, the process that the contractor and EEOC implemented for the expedited 2019 Revised EEO-1 collection is separate from EEOC’s overall Data and Analytics Modernization Program.

Dr. Haffer testified that this is just a one-time solution: “This system would be utilized one time for the collection of calendar year 2018 Component 2 data only. It would not be utilized after the EEOC makes its transition to the modernized data collection process.” *Id.* Thus, the one-time implementation costs and other costs associated with the 2018 filings (and, under the court’s order, 2017) will need to be re-done and repeated in the future. According to Dr. Haffer’s testimony, employers will need to reconfigure all of their systems, reporting and other process changes they undertook to comply with the expedited 2019 data collection in order to comply with

any new systems EEOC chooses to implement after its transition to the “modernized data collection process” described in Dr. Haffer’s declaration for subsequent years.

**C. Not Following Industry Standards For Data Collection
Aggravates Confidentiality Concerns**

Finally, the compressed timeline imposed by the district court for collection of 2017 and 2018 data by September 30, 2019, as well as the next data collection that would occur under the court’s order by March 30, 2020, ensures that EEOC’s collection of sensitive and confidential information will not follow industry standards. JA 58-59, 73-74. Dr. Haffer testified that to comply with acceptable industry standards for data collection, the timetable for collection by EEOC (with its contractor’s full participation) could not occur until 2021. *Id.* Dr. Haffer was not questioned as to what sacrifices in confidentiality were made in the contractor’s proposal for Component 2 data collection by September 30, 2019 (a full 15 months earlier than its earlier quoted January 2021 timetable for data collection pursuant to industry standards). JA 73-74. Similarly, there is no record evidence that addresses these confidentiality concerns with respect to the next potential data collection, in early 2020, of 2019 Component 2 data.

* * *

The serious concerns discussed above regarding the failures of EEOC to satisfy the requirements of the PRA have, thus far, received scant consideration in this litigation. And under the district court’s remedial orders, they simply vanish. This

Court should vacate the district court's order of remedial relief and direct the court to remand the matter in order to allow OMB and EEOC to discharge their responsibilities by, among other things, considering the evidence and concerns discussed above before deciding whether to proceed with a Component 2 collection and, if so, how and when to conduct it.

CONCLUSION

For the foregoing reasons and those set forth in the Government's brief, the judgment of the district court should be reversed.

DATED: August 26, 2019

Respectfully submitted,
SEYFARTH SHAW LLP

By /s/ Camille A. Olson

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James.BanksJr@shrm.org
Co-Counsel, Society for Human Resource Management

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and 32(a)(7)(B) because it contains 6,400 words, excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Cir. R. 32(a)(1). I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the brief was prepared in 14-point Garamond font using Microsoft Word.

DATED: August 26, 2019

SEYFARTH SHAW LLP

By /s/ Camille A. Olson
CAMILLE A. OLSON
COUNSEL FOR ALL *AMICI*

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2019, I electronically filed the foregoing Amicus Brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

DATED: August 26, 2019

SEYFARTH SHAW LLP

By /s/ Camille A. Olson
CAMILLE A. OLSON
COUNSEL FOR ALL *AMICI*

Component 2 EEO-1 Online Form
Establishment Report Data Entry - Comment Box Example

Comment box available for remarks about individual establishment (location) reports:

 <small>Office of Enterprise Data and Analytics</small>	<div style="text-align: center;">U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION Component 2 EEO-1 Online Filing System</div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"><div>Establishment Name: ABC Company Establishment Address: 1234 Main St., Suite 400, Chicago, Illinois, 60603 Report Type: Type 1</div><div style="text-align: right; margin-top: 20px;"><div style="background-color: black; color: white; padding: 5px 10px; border-radius: 3px; display: inline-block;">Save & Return to Dashboard</div></div></div> <div style="margin-top: 20px;"><p>Please use the text box below to provide any additional remarks or relevant information.</p><div style="border: 1px solid #ccc; height: 150px; margin-top: 10px;"></div></div> <div style="text-align: center; margin-top: 20px;"><div style="display: inline-block; background-color: black; color: white; padding: 5px 15px; border-radius: 3px; margin: 0 10px;">Back</div><div style="display: inline-block; background-color: black; color: white; padding: 5px 15px; border-radius: 3px;">Complete Establishment</div></div> <div style="font-size: small; margin-top: 20px;">If you experience technical issues, please call the HelpDesk at (877) 324-6214 or email EEOCompdata@norc.org for assistance.</div>
---	---

Component 2 EEO-1 Online Form
Certification Page – Comment Box Example

Comment box available on the certification page:



Office of Enterprise
Data and Analytics

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Component 2 EEO-1 Online Filing System

2018 COMPONENT 2 EEO-1 CERTIFICATION PAGE

Please fill in the information below. Check the box and press "Certify" when ready to finalize your Component 2 EEO-1 data for 2018.

CERTIFYING OFFICIAL:

Certifying official name:

Certifying official title:

Address Line 1:

Address Line 2 (optional):

City:

State:

ZIP code:

Email Address:

Telephone Number (include area code): () -

Signature (designated by typing full name):

Certification date (MM/DD/YYYY): / /

CONTACT PERSON INFORMATION:

Name of person to contact regarding this report:

Contact Person Title:

Address Line 1:

Address Line 2 (optional):

City:

State:

ZIP code:

Email Address:

Telephone Number (include area code): () -

SELECT TO CERTIFY:

☐ All statements are accurate and were prepared in accordance with the instructions.

COMMENTS

Please use the space below to provide any additional remarks or relevant information:

1,000 characters

Return to Dashboard

Save & Exit

Certify

All reports and information obtained from this report will be kept confidential as required by Section 709(e) of Title VII. Willfully false statements on this report are punishable by law, U.S. Code, Title 18, Section 1001.

If you experience technical issues, please call the Component 2 EEO-1 HelpDesk at (877) 324-6214 or email EEOCompdata@norc.org for assistance.

From:	CHRIS HAFFER </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=115E18F858C441728F7D6BF2871B5670-CHAFFER>
To:	"Michael Goodman - CWC <mgoodman@cwcc.org>"
Subject:	RE: Component 2 upload timeout
Date:	2019/09/24 15:35:00
Priority:	Normal
Type:	Note

Thanks for the head's up. First we're hearing about it. Will check into it.

From: Michael Goodman - CWC <mgoodman@cwcc.org>
Sent: Tuesday, September 24, 2019 3:10 PM
To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>
Subject: Component 2 upload timeout

Hi Chris,

We have had a number of reports from members that the system is timing out without an error message after around 30 minutes. One member who reported this was attempting to upload a 20 mb file with about 150,000 rows of data ... all type 3, 4, 8 and 9 records and no type 2. That member indicated that they had heard through their regional ILG that others were having similar problems. Have you had similar feedback?

Thanks,
Mike

Michael Goodman
Director, Compliance Solutions
1501 M Street, NW | Suite 1000 | Washington, DC 20005
Tel/Direct: 202-629-5679
mgoodman@cwcc.org | www.cwcc.org



FORMERLY THE EQUAL EMPLOYMENT ADVISORY COUNCIL (EEAC*)

The Center for Workplace Compliance (CWC) is an association dedicated to helping its member employers understand and manage their workplace compliance requirements and risks. CWC's membership includes businesses and organizations of all sizes and from every major economic sector. CWC does not provide legal advice. For advice regarding legal issues, members should consult legal counsel.

Sender:	CHRIS HAFFER </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP
----------------	--

	(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=115E18F858C441728F7D6BF2871B5670-CHAFFER>
Recipient:	"Michael Goodman - CWC <mgoodman@cw.org>"
Sent Date:	2019/09/24 15:35:38
Delivered Date:	2019/09/24 15:35:00

From:	VICTORIA A. LIPNIC </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=VLIPNIC>
To:	"Frebes, Sean P <sfrebes@seyfarth.com>"
Subject:	Fwd: Latest version of the PPT
Date:	2019/06/19 15:52:56
Priority:	Normal
Type:	Note

Get [Outlook for iOS](#)

From: DONALD MCINTOSH

Sent: Tuesday, June 18, 2019 5:35:15 PM

To: VICTORIA A. LIPNIC

Cc: SHAWANDA HARDY

Subject: Latest version of the PPT

Attached

Sender:	VICTORIA A. LIPNIC </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=VLIPNIC>
Recipient:	"Frebes, Sean P <sfrebes@seyfarth.com>"
Sent Date:	2019/06/19 15:52:56

U.S. Equal Employment Opportunity Commission

June 2019 Update



Victoria A. Lipnic Commissioner **U.S. Equal
Employment Opportunity Commission**

Status of EEOC Operations

2

- **Three Members:**

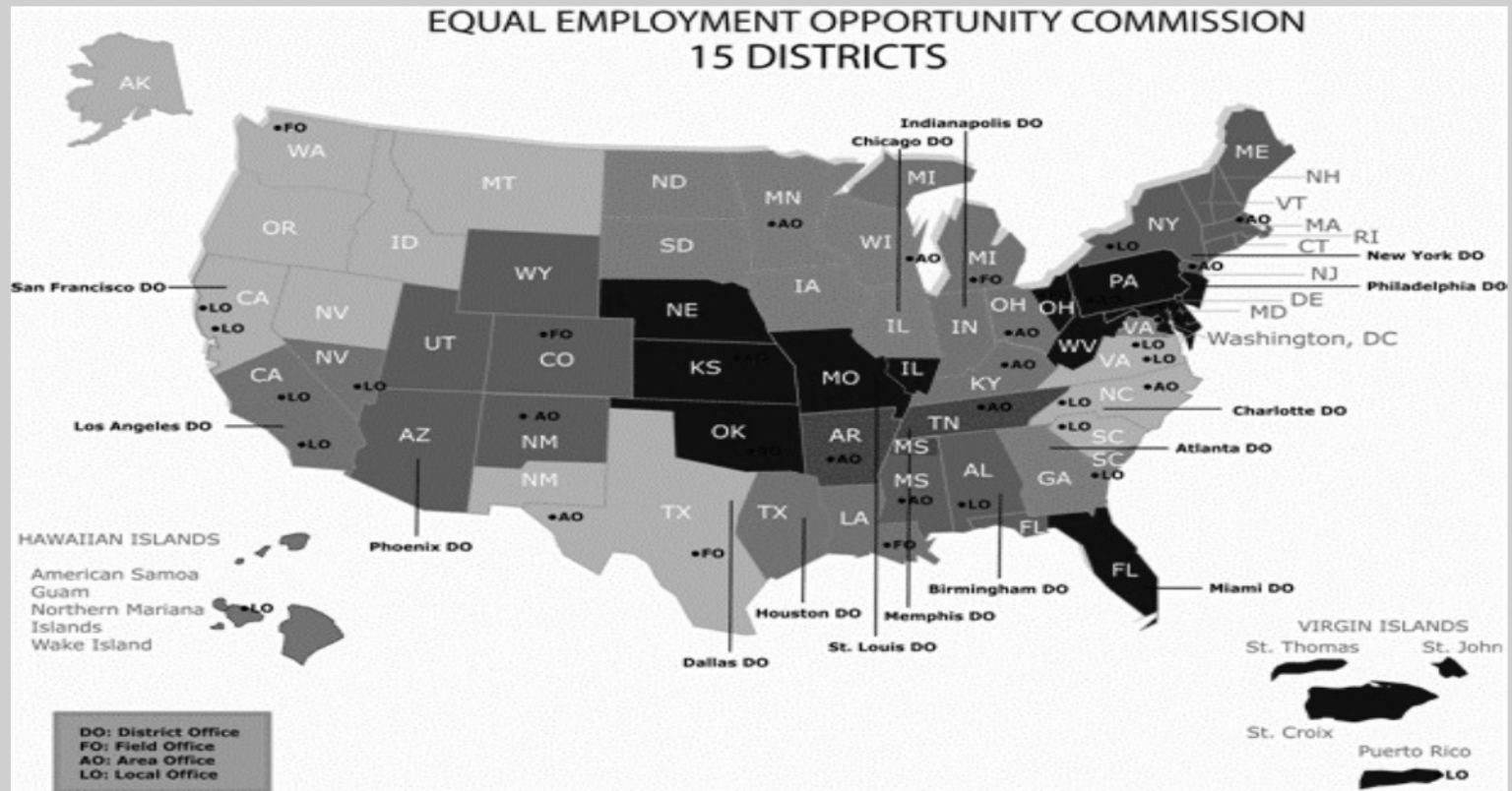
Janet Dhillon, Chair	(term ending July 1, 2022)
Victoria A. Lipnic, Commissioner	(term ending July 1, 2020)
Commissioner	(term ending July 1, 2019)
seats and the General Counsel	

Vacancies:	Charlotte A. Burrows,
	Two Commissioner

OPERATIONS

Offices

3



9 FIELD OFFICES* 14 LOCAL OFFICES* 15 DISTRICT OFFICES

The EEOC Process

4



ENFORCEMENT FY2018 CHARGE STATISTICS

5

554,000+ CONTACTS 200,000+ INQUIRIES
40,000+ INTAKE INTERVIEWS 76,418
CHARGE FILINGS 90,558 CHARGE
RESOLUTIONS \$354(MIL) IN MONETARY
BENEFITS 49,607 PENDING CHARGE INVENTORY

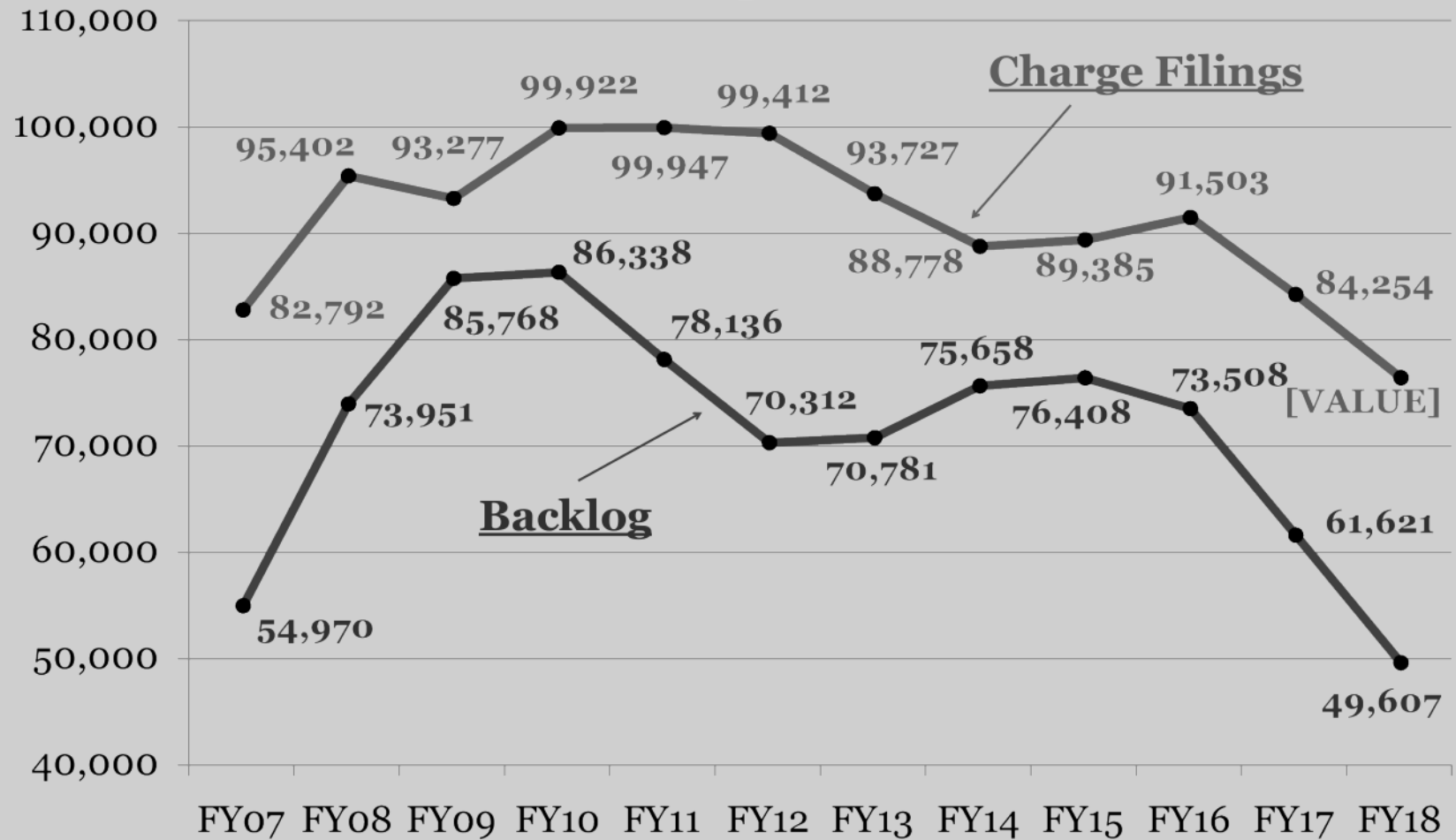
ENFORCEMENT FY2018 CHARGE ALLEGATIONS

6

Retaliation: 39,469 (51.6 percent of all charges filed) Sex: 24,655 (32.3 percent) Disability: 24,605 (32.3 percent) Race: 24,600 (32.2 percent) Age: 16,911 (22.1 percent) National Origin: 7,106 (9.3 percent) Color: 3,166 (4.1 percent) Religion: 2,859 (3.7 percent) Equal Pay Act: 1,066 (1.4 percent) Genetic Information: 220 (0.3 percent)* Because individuals often file charges claiming multiple types of discrimination, the sum of allegations above exceeds total charges received.

EEOC CHARGE FILINGS TO BACKLOG (FY2007 – FY2018)

6



ENFORCEMENT FY2018 LITIGATION STATISTICS

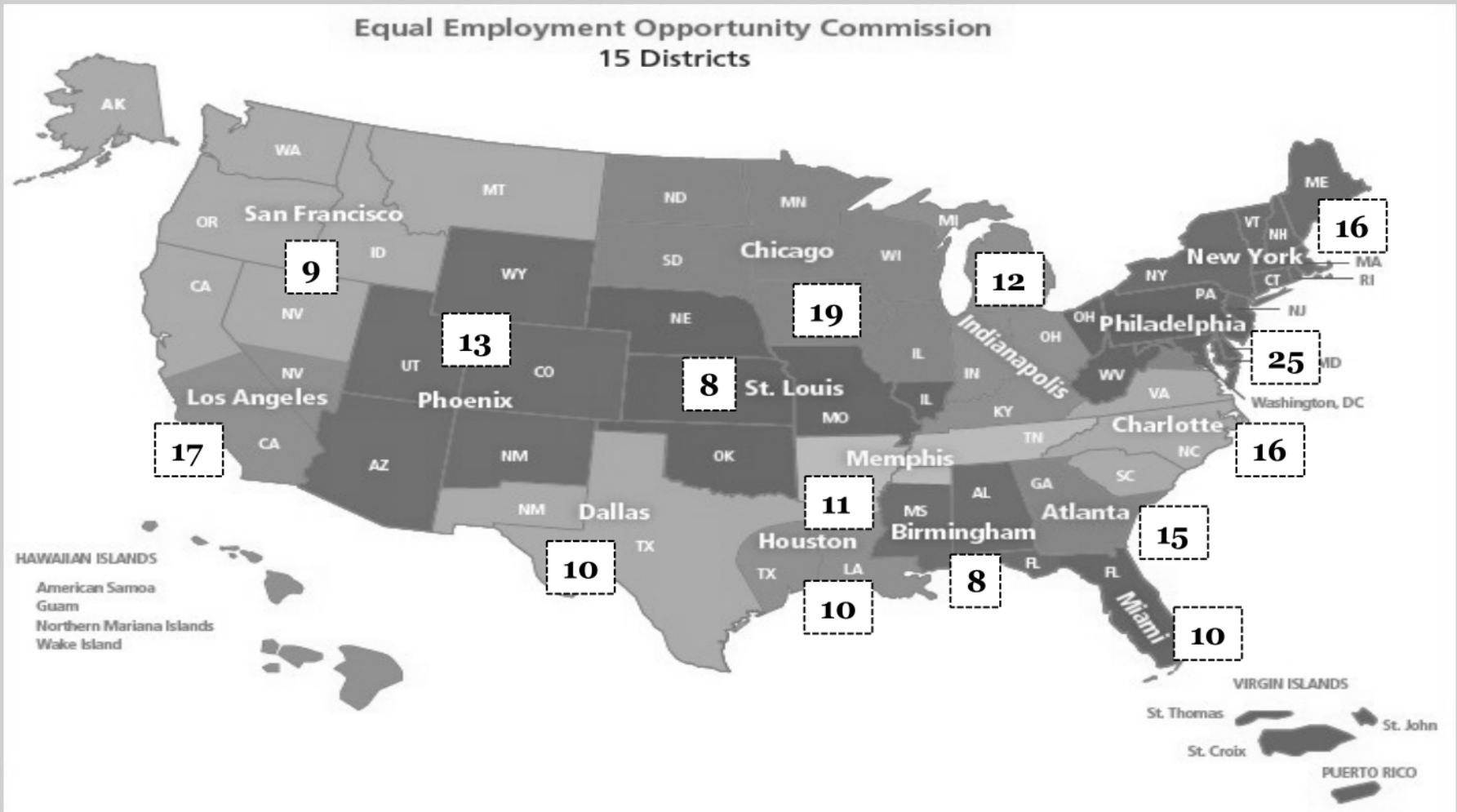
8

○ 199 **MERITS SUITS FILED** 141 **MERITS SUITS RESOLVED**
\$53.6(MIL) IN MONETARY BENEFITS CHARACTERISTICS OF FY 2018 SUITS 117
Non-Systemic Class Suits 37 Systemic Suits Individual Suits 45

BY STATUTE Title VII
111ADA 84ADEA
10EPA 5

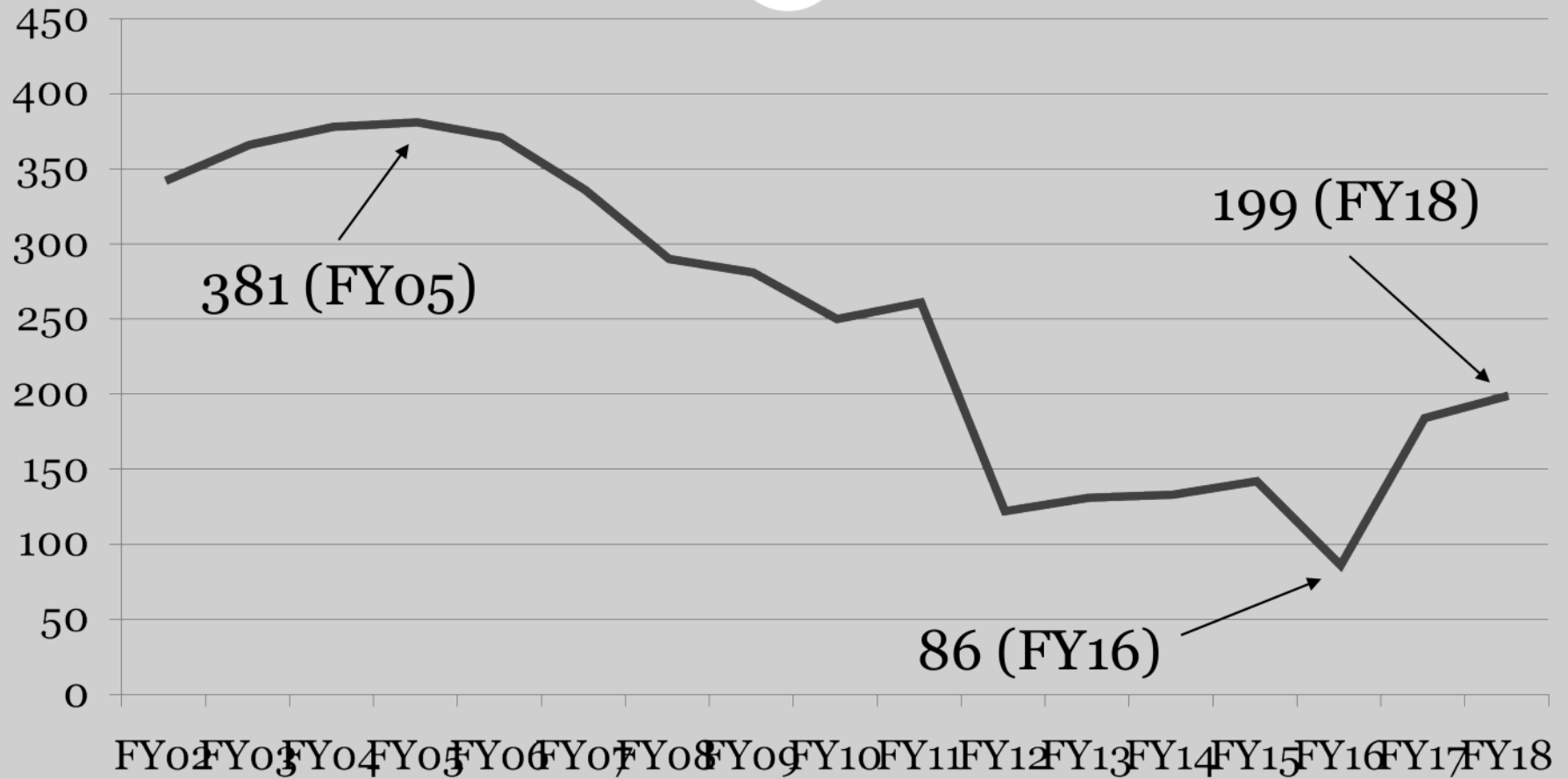
FY18 Lawsuit Filings by District Office

9



EEOC MERITS SUITS FILED(FY2002 – FY2018)

10



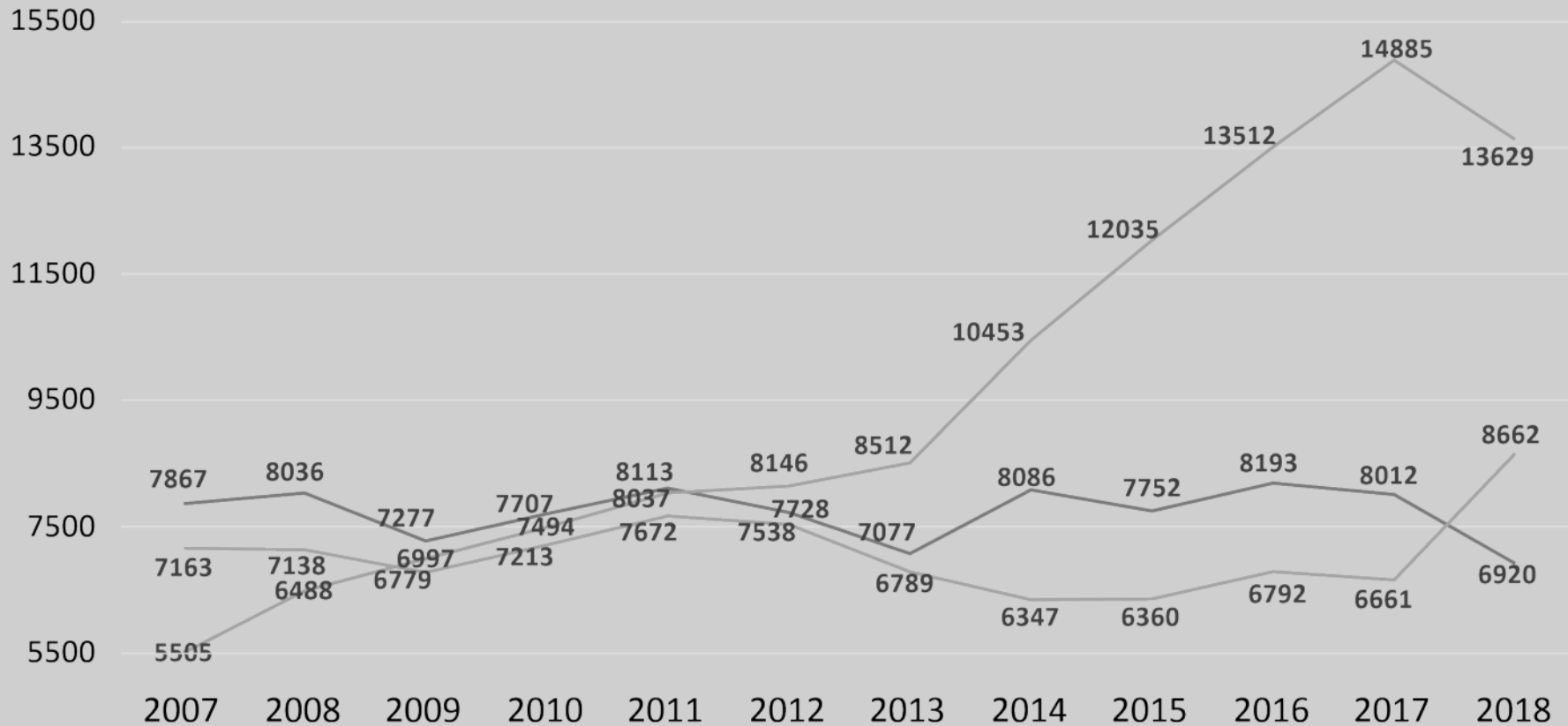
Federal Sector Enforcement

Federal Employees and Agencies' Hearings with EEOC AJs

11

— Hearing Requests

— Hearings Inventory



Workplace Harassment

12

- **EEOC Select Task Force on the Study of Harassment in the Workplace – 2016 Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic**
Hits on EEOC's sexual harassment page doubled in wake of Weinstein allegations – NYT Oct 5., 2017
Charges alleging sexual harassment up by 13.6% in FY18
Reasonable cause findings on harassment charges increased by 24% from FY17
66 lawsuits filed alleging harassment in FY18
41 lawsuits alleged sexual harassment – 50% increase from FY17
\$70 million recovered overall in FY18 for victims of sexual harassment – 47% increase from FY17

Issues to Watch

13

- **EEO-1/Component 2 Pay Data Collection**
Workplace Harassment Arbitration Retaliation Age Discrimination
June 2018 Report of EEOC Commissioner & Acting Chair Victoria A. Lipnic, The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA)
Americans with Disabilities Act “100% healed” and other policies requiring leave/discharge instead of return to work
Pregnancy Discrimination Accommodation

Cases to Watch

14

- Age/Disparate Impact/Applicants Kleber v. CareFusion Corp. (7th Cir.) (en banc decision Jan. 23, 2019, holding that the ADEA's disparate impact provision does not apply to outside applicants; cert petition pending)Equal Pay Act/use of prior salary – SCOTUS ruling on cert petitionYovino v. Rizo (en banc 9th Cir. held that an employee's "prior salary alone or in combination with other factors cannot justify a wage differential" between male and female employees; SCOTUS vacated and remanded because the author of the en banc decision and member of the majority, J. Reinhardt, was deceased when the decision was filed and should not have been counted)Title VII administrative-exhaustion requirementFort Bend County, Tex. v. Davis, No. 18-525 (S. Ct. June 3, 2019) (Title VII's charge-filing requirement is not jurisdictional, requiring dismissal at any stage of the proceedings, but is, instead, a claim-processing rule subject to forfeiture)

EEOC on Defense – Litigation

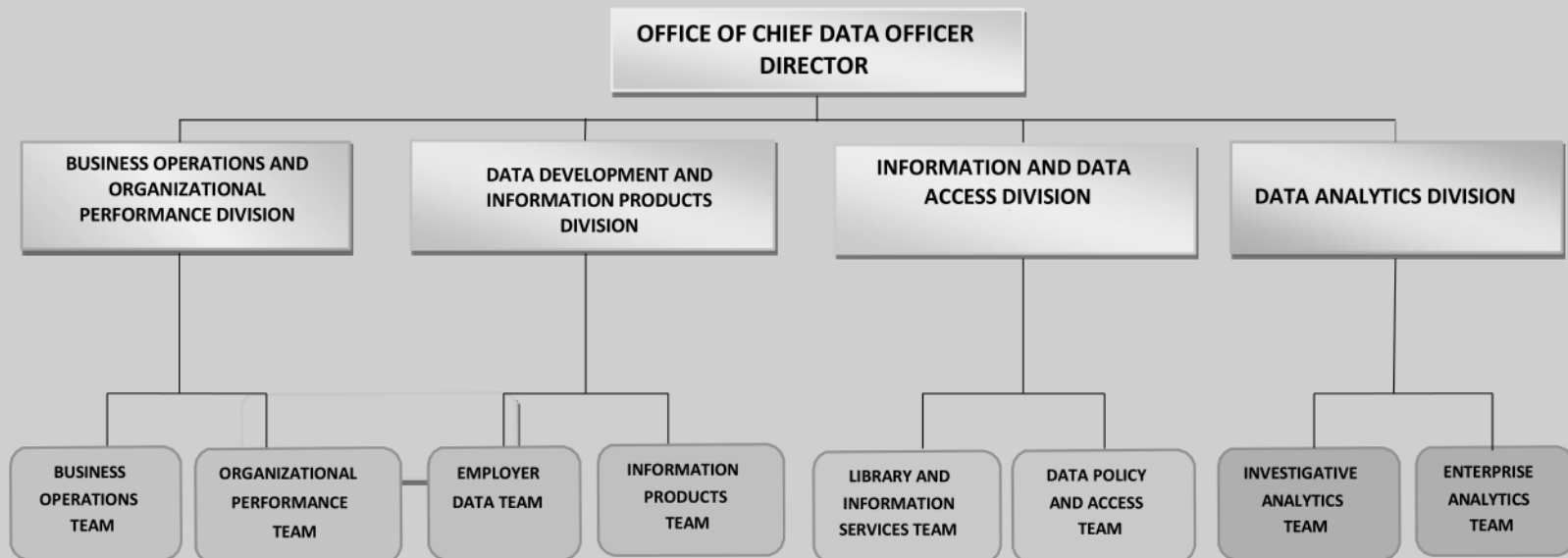
15

- ***AARP v. EEOC (D.D.C.) (challenging EEOC's 2016 ADA and GINA final rules on employer wellness programs; court issued order vacating the incentive sections of the rules, effective Jan. 1, 2019; EEOC published conforming rule Dec. 20, 2018) Texas v. EEOC et al. (5th Cir.) (challenging EEOC's 2012 revised enforcement guidance on employer use of arrest and conviction records) BNSF v. EEOC (N.D. Tex.) (challenging EEOC administrative enforcement action pursuant to a 2012 Commissioner Charge) Nat'l Women's Law Center et al. v. OMB & EEOC (D.D.C.) (challenging OMB's stay of EEOC's 2016 revisions to the EEO-1 form to collect pay data (Component); Mar. 4, 2019 order vacating OMB's stay; April 25, 2019 order, inter alia, requiring collection of Component 2 and regular status updates)***

EEOC Office of EnterpriseData & Analytics

16

- **EEOC's first Chief Data Officer, position created in November 2017**
Office of Enterprise Data & Analytics created in May 2018



U.S. Equal Employment Opportunity Commission

June 2019 Update

16

Questions?

From:	Rae Vann - CWC <rvann@cw.org>
To:	"TABITHA JENKINS </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a4abde395fa14ec1a775974ef46f02e2-TJENKIN>"
Subject:	RE: CWC's 2019 Compliance Conference - Oct. 23-25, 2019 - Nashville, TN
Date:	2019/09/24 17:14:21
Priority:	Normal
Type:	Note

Thanks for your email, Tabitha, and hope to connect on another occasion!

Regards,

Rae

From: TABITHA JENKINS <TABITHA.JENKINS@EEOC.GOV>

Sent: Tuesday, September 24, 2019 5:10 PM

To: Rae Vann - CWC <rvann@cw.org>

Cc: John Steiger - CWC <JSteiger@cw.org>

Subject: RE: CWC's 2019 Compliance Conference - Oct. 23-25, 2019 - Nashville, TN

Dear Rae –

I am so sorry I did not get back to you earlier. As you can imagine, the hearing was all consuming. It was nice to see a friendly face in Michael – even though I was completely sleep-deprived by that point!

Unfortunately the Chair will not be able to attend the conference next month. Please keep her in mind for other events as I know she would be happy to participate.

It was wonderful meeting you and the team at CWC. I hope to connect again in the near future.

Regards –

Tabitha

Tabitha R. Jenkins

Chief of Staff to Chair Dhillon – Equal Employment Opportunity Commission

131 M Street NE

Washington, D.C. 20507

o: 202.663.4901

m: 202.227.1084

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From: Rae Vann - CWC <rvann@cw.org>

Sent: Tuesday, September 24, 2019 4:57 PM

To: TABITHA JENKINS <TABITHA.JENKINS@EEOC.GOV>

Cc: John Steiger - CWC <JSteiger@cw.org>

Subject: CWC's 2019 Compliance Conference - Oct. 23-25, 2019 - Nashville, TN

Dear Tabitha –

Thanks again to you, Chair Dhillon, Haley and Andy for taking time out of your busy schedules earlier this month to meet with Joe, Mike, Danny and me. We are pleased to have had an opportunity to tell you about CWC and outline some of the pressing policy issues on the minds of our members.

As we mentioned, CWC is hosting its 2019 Compliance Conference next month in Nashville, Tennessee. Please accept this as our formal invitation for Chair Dhillon to serve as keynote speaker.

For your information, CWC's members-only conferences typically are attended by corporate EEO and affirmative action compliance managers, diversity executives, and in-house employment counsel and others actively involved in leading and supporting their companies' workplace equal employment opportunity compliance efforts. Each year we look forward to updates from the EEOC regarding compliance developments, and this year is no exception. We would love to hear from Chair Dhillon regarding her policy and enforcement priorities for the Commission, as well as the agency's ongoing implementation of the EEO-1 Component 2 data collection requirement.

The Conference will commence at 2:30 p.m. on Wednesday, October 23, and our preference would be for Chair Dhillon's remarks to coincide with the opening session of the Conference that afternoon. If she is unable to make that time work, we would be happy to discuss other times during the conference that may better accommodate her schedule.

For your information, our Conference agenda is available here:

<https://www.cwc.org/docs/CC19-Agenda.pdf>. We hope that Chair Dhillon is able to join us in Nashville next month.

If you have any questions or need more information, please don't hesitate to let me know.

Best regards,

Rae

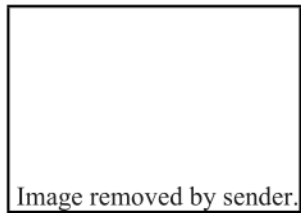
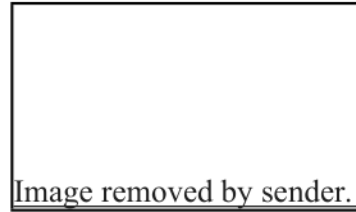
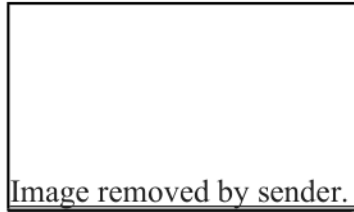
Rae Vann

Senior Vice President, General Counsel and Corporate Secretary

1501 M Street, NW | Suite 1000 | Washington, DC 20005

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Sender:	Rae Vann - CWC <rvann@cw.org>
Recipient:	"TABITHA JENKINS </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a4abde395fa14ec1a775974ef46f02e2-TJENKIN>"
Sent Date:	2019/09/24 17:14:15
Delivered Date:	2019/09/24 17:14:21

From:	Kaylin, Anthony <akaylin@aseonline.org>
To:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Subject:	RE: EEOC EEO-1 Component 2 Data Collection Announcement
Date:	2019/09/27 09:53:00
Priority:	Normal
Type:	Note

Will do boss. All our clients have loaded up. Take care.

Anthony Kaylin

American Society of Employers

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Cell: (734) 881-3550

akaylin@aseonline.org

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From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Sent: Friday, September 27, 2019 9:51 AM

To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Subject: EEOC EEO-1 Component 2 Data Collection Announcement

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

All – please relay this message to your clients and members. It will appear shortly on the EEOC website and the Component 2 website.

In a September 27, 2019 Status Report that was filed in the lawsuit discussing post-September 30th activities, the EEOC stated that

so long as the Court's order is in effect stating that the collection will not be complete until it reaches what the Court has determined

to be the target response rate, the EEOC will continue to accept Component 2 data for 2017 and 2018. The EEOC encourages all filers to submit their data as soon as possible.

Thanks,

Chris Haffer

Samuel C. "Chris" Haffer, Ph.D.

Chief Data Officer

Director, Office of Enterprise Data and Analytics

U.S. Equal Employment Opportunity Commission

131 M Street, NE

Washington, DC 20507

Chris.Haffer@eeoc.gov

202.663.4949 Office

202.351.9615 Mobile

Sender:	Kaylin, Anthony <akaylin@aseonline.org>
Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Sent Date:	2019/09/27 09:52:54
Delivered Date:	2019/09/27 09:53:00

From:	CHRIS HAFFER </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=115E18F858C441728F7D6BF2871B5670-CHAFFER>
To:	"Michael Eastman - CWC <meastman@cdc.org>"
Subject:	RE: Policy Alert: EEOC Will Continue to Accept EEO-1 Component 2 Data After September 30 Deadline
Date:	2019/09/27 11:16:00
Priority:	Normal
Type:	Note

Thanks. And please do not attribute anything to me. You learned of this from the court status report. Much appreciated.

From: Michael Eastman - CWC <meastman@cdc.org>
Sent: Friday, September 27, 2019 11:15 AM
To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>
Subject: FW: Policy Alert: EEOC Will Continue to Accept EEO-1 Component 2 Data After September 30 Deadline

Thanks very much for your email this morning. FYI, below is the email we've sent to CWC members. We are also posting the message on social media and other platforms that we utilize.

From: Center for Workplace Compliance [<mailto:info@cdc.org>]
Sent: Friday, September 27, 2019 11:10 AM
To: Michael Eastman - CWC
Subject: Policy Alert: EEOC Will Continue to Accept EEO-1 Component 2 Data After September 30 Deadline

View this email [in your browser](#).



Center for Workplace Compliance

EEOC Will Continue to Accept EEO-1 Component 2 Data After September 30 Deadline

Today, the EEOC announced that it would continue to accept EEO-1 Component 2 data from

employers after the formal September 30, 2019 deadline. The announcement, which came via a [**Status Report**](#) filed with the federal district court that ordered the data collection, indicates that EEOC intends to leave the Component 2 portal open to collect data as long as the court's order remains in effect, stating that the collection "will not be complete until it reaches what the Court determined to be the target response rate." As of Wednesday, September 25, approximately 40 percent of eligible filers had completed submission of their EEO-1 Reports. The current target for collection to be deemed "complete" is 72.7 percent.

As a practical matter, this means that while no formal "extension" has been granted, employers who have experienced difficulty filing their Component 2 reports due to technical issues will still be able to file after the September 30, 2019 deadline. At this point, however, we have no way of knowing how long that window will be, so employers are encouraged to file as soon as possible.

We will continue to update you on important developments regarding the Component 2 data collection. In the meantime, if you have any questions, please feel free to contact one of our compliance policy experts at (202) 629-5650.

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Michael Eastman

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Sender:	CHRIS HAFFER </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=115E18F858C441728F7D6BF2871B5670-CHAFFER>
Recipient:	"Michael Eastman - CWC <meastman@cw.org>"
Sent Date:	2019/09/27 11:16:45
Delivered Date:	2019/09/27 11:16:00

From:	Michael Goodman - CWC <mgoodman@cw.org>
To:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Subject:	Enjoyed the airport time after ILG
Date:	2019/08/12 13:44:44
Priority:	Normal
Type:	Note

Hey Chris,

Just now getting around to thanking you again for our conversation at the airport in Milwaukee after the ILG conference. I realized afterward that I didn't exactly ask if we could join you ... we just sort of sat down!

Any chance you would reconsider joining us in Nashville for CWC's Fall Compliance Conference, October 23-25? I'm certain that our members would be very interested in updates on OEDA activities and perhaps a readout on what we hope will have been a successful Component 2 filing season (at least from an upload/processing standpoint).

I understand that you've got to pick and choose which of these things you attend, but we'd love to have you!

Best regards,

Mike

Michael Goodman

Director, Compliance Solutions

1501 M Street, NW | Suite 1000 | Washington, DC 20005

Tel/Direct: 202-629-5679

mgoodman@cwcc.org | www.cwcc.org



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Sender:	Michael Goodman - CWC <mgoodman@cwcc.org>
Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Sent Date:	2019/08/12 13:43:36

Delivered Date:	2019/08/12 13:44:44
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From:	Kaylin, Anthony <akaylin@aseonline.org>
To:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Subject:	RE: Question
Date:	2019/06/25 15:56:20
Priority:	Normal
Type:	Note

Thanks boss!

Anthony Kaylin

American Society of Employers

19575 Victor Parkway Suite 100

Livonia, MI 48152

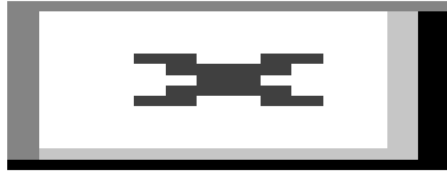
Tel: (248) 223-8012

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Principles & Practices I.



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a social media post Description automatically generated

From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Sent: Tuesday, June 25, 2019 3:53 PM

To: Kaylin, Anthony <akaylin@aseonline.org>

Subject: RE: Question

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

The web-based, Computer-assisted Web Interview (CAWI) data collection instrument will be available for all filers on July 15, 2019. For the convenience of employers who prefer to utilize data file upload capability, and in addition to the CAWI data collection instrument, NORC is working on a data file upload function and validation process which is expected to be available as an additional data collection method no later than August 15, 2019.

The court deadline is to collect the data by September 30, 2019.

From: Kaylin, Anthony <akaylin@aseonline.org>

Sent: Tuesday, June 25, 2019 3:00 PM

To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>

Subject: Question

Hope you are good. Hearing rumors that Mid August for the tool functionality and you may not make the Court deadline. Is that true?

Anthony Kaylin

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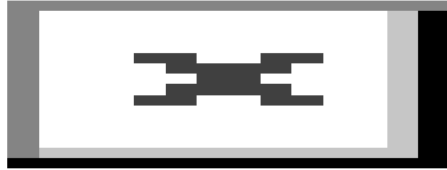
Cell: (734) 881-3550

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Sender:	Kaylin, Anthony <akaylin@aseonline.org>
Recipient:	"CHRIS HAFFER </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=115e18f858c441728f7d6bf2871b5670-CHAFFER>"
Sent Date:	2019/06/25 15:56:07
Delivered Date:	2019/06/25 15:56:20

From:	CHRIS HAFFER </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=115E18F858C441728F7D6BF2871B5670-CHAFFER>
To:	"Kaylin, Anthony <akaylin@aseonline.org>"
Subject:	RE: Question
Date:	2019/07/03 10:26:00
Priority:	Normal
Type:	Note

Thanks. I will probably ask NORC to address it in an FAQ. Keep the chatter coming! Happy 4th.

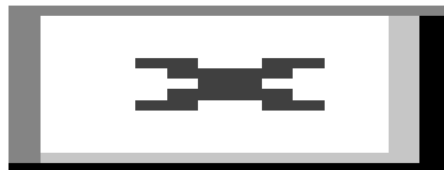
From: Kaylin, Anthony <akaylin@aseonline.org>
Sent: Wednesday, July 03, 2019 10:25 AM
To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>
Subject: RE: Question

Yup but I thought I mention it to you chatter on the street.

Enjoy the 4th. Keep out of the way of the tanks.

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From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>
Sent: Wednesday, July 3, 2019 10:19 AM
To: Kaylin, Anthony <akaylin@aseonline.org>
Subject: RE: Question

Yep – EEOC IT staff required that statement. There is no such thing as a 100% safe data communication method. This portal uses all the modern internet security techniques currently available.

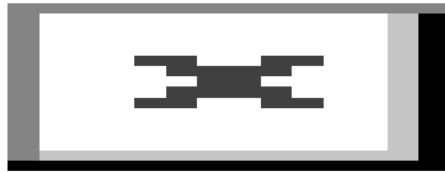
From: Kaylin, Anthony <akaylin@aseonline.org>
Sent: Wednesday, July 03, 2019 10:11 AM
To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>
Subject: RE: Question

That was from the NORC email sent out yesterday

NORC at the University of Chicago has been contracted to conduct the Component 2 EEO-1 Compensation Data Collection. This is a government-contracted system that may be accessed and used only for official government business by authorized personnel. Unauthorized access or use of this website may subject violators to criminal, civil, and/or administrative action. The data in this system are being collected with software that is designed to secure your data and provide you with confidentiality. However, please be apprised that all Internet-based communication is subject to the remote likelihood of tampering from an outside source. Access or use of this website by any user constitutes consent to this term.

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From: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>
Sent: Wednesday, July 3, 2019 9:57 AM
To: Kaylin, Anthony <akaylin@aseonline.org>
Subject: RE: Question

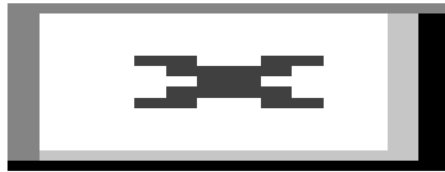
Whoever is telling you the portal is unsecured is totally wrong. There will be two ways to file. Either use the secure portal or the secure file upload function which will be available in August.

From: Kaylin, Anthony <akaylin@aseonline.org>
Sent: Wednesday, July 03, 2019 9:18 AM
To: CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>
Subject: Question

I have clients who are balking at filing in an unsecured portal. . Consent cannot be compelled by statutory/regulatory requirement. So if we send you a secure thumb drive of the info directly to you, will that comply?

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Sender:	CHRIS HAFFER </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=115E18F858C441728F7D6BF2871B5670-CHAFFER>
Recipient:	"Kaylin, Anthony <akaylin@aseonline.org>"
Sent Date:	2019/07/03 10:26:29
Delivered Date:	2019/07/03 10:26:00